

**Perspectives on Social Services
and Social Issues**



Perspectives on Social Services and Social Issues

Edited by
Jacqueline S. Ismael
and
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Canadian Council on Social Development
Ottawa

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PREFACE

The selections in this volume are drawn from the proceedings of the Second Conference on Provincial Social Welfare Policy held at The University of Calgary, May 1 - 3, 1985. The conference sought to further national cross-disciplinary research on provincial social welfare policies and programmes from a comparative provincial perspective. The conference was organized around four major themes: The Canadian Welfare State: Evolution and Transition; Income Security and Job Creation; Issues of Structure and Process; and Selected Social Issues and Programmes.

The rich array of case studies of provincial initiatives, social issues and programmes presented at the conference is reflected in the selections presented here. Describing the patterns, regularities and differences in social welfare policy and programmes across provinces and identifying the factors underlying such patterns, must be empirically grounded in the systematic analysis of concrete cases. The studies presented here reflect both the broad range of cases and the commonality of themes and issues that emerged at the conference. Privatization of service delivery, expansion of services in response to social issues, service accountability to categorical client groups and control by oppressed populations are common patterns across the array of cases.

A variety of people, institutions and agencies cooperated in making the conference a success. While we cannot thank them all individually, we do wish to recognize the contribution of the National Planning Committee:

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Initiatives in Social Service Delivery



ONE

ALBERTA AND THE FEDERAL-PROVINCIAL SOCIAL SERVICES INITIATIVE 1975-1985

Richard B. Splane

This chapter is written as the Peter Lougheed era in Alberta is drawing to a close. The era began with the election of the Progressive Conservative government in the summer of 1971 and will end when Peter Lougheed turns over the leadership of the party and the premiership in the fall of 1985. Mr. Lougheed's announcement, in June 1985, of his intention to resign resulted in a host of articles that analyzed the Lougheed period and discussed the Premier's personal accomplishments and those of his successive governments. The many tributes to the Premier emphasized his political contributions, including his success in preventing the divisive polarization of the population witnessed in neighbouring provinces. They also referred to the contributions of his government to economic, constitutional and even cultural development.

In none of the assessments, however, was the Lougheed era credited with comparable advances in the field of social welfare. This is of significance in examining Alberta's relationship to the nation-wide endeavour in the 1970s to rationalize and improve Canada's social welfare system — the Federal-Provincial Social Security Review. The less than distinguished social welfare record during the Lougheed era suggests that the Social Security Review did not receive the attention and support of the Lougheed governments that might have produced major advances and earned, for the Premier, the acclaim he has received for accomplishments in other areas.

This chapter considers the part Alberta played in the Federal-Provincial Social Security Review, especially in relation to the component of the Review relating to social services, referred to in this chapter as the Social Services Initiative. In

exploring the question, this chapter touches on how Alberta's policies were affected by the remarkable growth in the province's economy; by federal-provincial conflicts over policies on energy, transportation and the constitution; by the province's long-standing attitudes toward social welfare issues; and by the lobbying efforts of the voluntary social welfare sector. The chapter also speculates on how the Social Services Initiative may have affected the development of social services in Alberta both during and after the Review.

The social services story lacks the high drama of the province's conflict with the federal government on energy policy; there is no equivalent, here, of Premier Lougheed's action in reducing, and threatening to cut off, oil supplies to Eastern Canada. Indeed, if the sole source of data on the Social Security Review was the communiqués issued following the nine or ten meetings of the Ministers of Welfare to consider strategies to achieve the Review's objectives, one would find little evidence that Alberta took substantially different positions from those of other provinces. Alberta joined the rest of the provinces in the consensus normally reached at the meetings; it never requested that a minority position be reported. Alberta's relationship to the Review is, nonetheless, worth examining, to test the hypothesis or generalization that Alberta was initially interested in and supportive of the Review but that its interest and support waned during the concluding years. Hence, it is hard to identify any enduring impact that the Review may have had.

The Federal-Provincial Social Security Review extended from its launch early in 1973 to its foundering, with the demise of the Social Services Financing Act, in the fall of 1978. Thus it was on the national stage for five of the fourteen years of the Lougheed era.

The Review stemmed from the political needs of the second Trudeau Government elected in October 1972. It was a minority Liberal Government and depended on the support of the New Democratic Party in the House of Commons. The objectives of the Review, in harmony with social policies advocated by the NDP, were to bring about major improvements in the income security and social services structures and programmes that make up Canada's social security system. The objectives, and the various strategies to achieve them, were set out in the federal government's *Working Paper on Social Security in Canada*, known generally as the *Orange Paper* of the Minister of National Health and Welfare, Marc Lalonde (1973).

The Review, however, was not wholly a response to the politics of a minority government, nor should it be seen as a wholly federal initiative. In November 1972 the provincial ministers of welfare, meeting in Victoria, decided that something like the Review was needed, having reached the conclusion that an unfinished agenda for social welfare reform called for a resumption of federal-provincial collaboration. That agenda had been pushed aside by the debates over the Constitutional Review of 1968 to 1971. And because the constitutional talks broke down over the division of powers respecting social policy, there had been a further period of uncertainty about how to constructively involve all governments in addressing unmet socio-economic needs. The provincial welfare ministers concluded that they needed to resume the federal-provincial meetings of welfare ministers that had been notably fruitful during much of the 1960s. In their closing communiqué at Victoria,

they called on the federal government "to convene a federal-provincial conference before the spring of 1973 to discuss social policy on a comprehensive basis" (British Columbia 1972). In convening the first meeting of the Social Security Review in April 1973, the federal government could legitimately claim to be responding to the provincial request. Thus, the Review can be seen as representing federal and provincial concurrence on the need for social welfare reform, rather than as a purely federal initiative.

When the Social Security Review was launched, the first Lougheed Government — the first Progressive Conservative Government elected in Alberta — had been in power for a year and a half and had demonstrated that it intended to exercise its growing influence in all significant federal-provincial matters. It had brought in some ideas about improving the province's social welfare programmes and shortly after taking office reorganized the separate health and welfare functions into a single department. Bruce Rawson was appointed Chief Deputy Minister of the new Department of Health and Social Development and Duncan Rogers, who had played an important role in the 1960s in the Canada Assistance Plan (CAP) negotiations and in Alberta's Preventive Social Services Programme, became Deputy Minister of Services (Alberta, Department of Health and Social Development, Annual Report 1971-72).

The Alberta Government had also established a Department of Federal and Intergovernmental Affairs, headed by a strong Minister, Lou Hyndman, with a mandate, *inter alia*, to review and coordinate all the "policies, programs and activities of the government of Alberta and its agencies in relation to the government of Canada" (Alberta, Department of Federal and Intergovernmental Affairs, Annual Reports 1973-74 to 1983).

In preparation for the first meeting of the Social Security Review, the Department of Health and Social Development published a Position Paper which expressed the government's basic philosophy on income security issues. It also referred to studies conducted on the views of Albertans on related issues and set forth the Province's position on a number of policies and programmes being considered by the Review (Alberta, Department of Health and Social Development 1973).

The Position Paper, however, dealt wholly with income security, against the advice of one of the Department's consultants that Alberta should press for a larger place in the Review for social services than was evident in the Federal Orange Paper.¹ He suggested that, in making that case, Alberta could point to its Preventive Social Services (PSS) programme. Through it, the province made grants to municipalities and, through them, to voluntary social welfare agencies to develop or expand social services needed by the community. PSS had been developed in the hope that its grants to municipalities and agencies would be wholly shareable under the Canada Assistance Plan; however, they proved to be only partially shareable. Alberta thus was proud of its social services programme, which would benefit from the creation of a broader and more flexible federal-provincial measure than CAP. The consultant felt that Alberta could also contribute information on its experimental community resource centre projects for the coordinated delivery of health, personal and community social services in Medicine Hat, High Level and Edmonton. This contribution would be made with a view to including the community resource centre

concept in the social services strategy within the Review.²

The first meeting of the Social Security Review, consisting of the Ministers and Deputy Ministers of Welfare, and departmental officials, was held in Ottawa in April 1973. The participants set up the structures needed for work on the priority matters of income security and employment. It was at the second meeting held in October 1973 that the decision was made to establish a Working Party on Social Services. Duncan Rogers was appointed its Chairman, which seemed to indicate the Alberta Government's willingness to play an important role in the Review as well as the other provinces' recognition that Alberta had some claim to leadership in the development of social services.³

The Working Party carried out its assignment ably and reported to the third meeting of the Review held in November 1974. The Ministers found the Report useful and called for further work by the Working Party and the Continuing Committee of Deputy Ministers. They asked the Working Party, for the concluding phase of its analysis, to "develop alternative legislative frameworks for the delivery and financing of social services." And they asked the Continuing Committee "to examine specifically the question of cost-sharing arrangements for specific kinds of service programs, and to review current problems in the interpretation of the Canada Assistance Plan Act and regulation" (Health and Welfare Canada 1974).

At the following meeting of the Review, held in February 1975, the Federal Chairman, Marc Lalonde, mentioned the slow progress on the social services strategy, attributing it to the priority necessarily given to "the income supplementation, social insurance and community employment strategies." As though responding to criticism from social welfare volunteers about the lack of evident progress on social services, Mr. Lalonde remarked that "it is evident to all ministers here that we will want in future to give first priority to work on the social services strategy, once we have mapped out our plans for reforming the income security part of the social security system" (Health and Welfare Canada 1975a).

The assumption that the federal and provincial Ministers would agree on an income security plan proved to be unjustified. At the next meeting, the emphasis shifted to social services, a development interpreted by some observers as the Ministers' attempt to achieve success in social services, because federal-provincial agreement on income security was eluding them.

The meeting at which the remarkable breakthrough was made on social services was held in Ottawa on April 30th and May 1st, 1975. At its conclusion, Marc Lalonde was able to announce agreement on his proposal for "a sweeping change in the approach to the financing of social services in Canada." The agreement was unanimous and the Ministers expressed the hope that the new social services legislation would be in force as early as possible in 1976 (Health and Welfare Canada 1975b).

Because the new programme was to be a shared-cost measure, the concurrence of Helen Hunley, Alberta's Minister of the welfare department, now called the Department of Social Services and Community Health (ASSCH) deserves comment. Her agreement to a new federal-provincial programme using this approach seemed to run counter to the Government of Alberta's stated opposition to shared-cost

programmes. Assertions of that position may be found in nearly all of the annual reports of the Department of Federal and Intergovernmental Affairs. An example is this reference, which appeared in its 1975-76 report:

Provincial reservations about the concept of conditional grants have been evident since the early 1960s. The provinces have opposed the use of shared-cost programs on constitutional grounds, maintaining that the policy areas of such are all provincial responsibilities. Arguments have been made that decisions regarding expenditures on shared-cost programs have taken place outside of the provinces' planning processes. Criticisms have been expressed over the lack of adequate consultation with the provinces prior to the implementation of shared-cost programs. The federal government has tended to make unilateral changes both in policies and in financial support. In general the lack of provincial budgetary and administrative controls over programs so dramatically affecting their citizens, has been a concern frequently expressed by the provinces (pp. 16-17).

A similar statement had been read into the record by Bruce Rawson, in the absence of his Minister, at the second meeting of the Social Security Review. The statement indicated that Alberta would like "to see cost-sharing end altogether, with the corresponding federal revenue being transferred to the provinces through the form of tax points or other neutral benefits" (Health and Welfare Canada 1973). On that occasion Alberta's approach was strongly attacked by a number of the other provincial ministers. This may have convinced Alberta's Minister in 1975 that she should not press for a policy that did not have the support of the other provinces.⁴ Because Ministers enjoy increased power in provincial priority-setting, if a programme they administer is funded on a shared-cost basis, they normally favour that approach — often in spite of the strong opposition of ministers of the treasury or other control agencies. This may have been true of Miss Hunley's position in 1975; as we will see, it was not the position she took in 1978.

The provincial Ministers' expectation that the new programme would be in effect early in 1976 was not realized. When they met in February 1976 they had before them only a "draft of the proposed new social services legislation." After reaching agreement on all its principal features they "expressed the hope that the new social services legislation will be in effect early in 1977" (Health and Welfare Canada 1976).

The Social Services Act was, in fact, presented to the House of Commons as Bill C57 only in June 1977. It was described as "an act to authorize the making of contributions by Canada toward the costs of the provision, development, extension and improvement of social services throughout Canada." Its purpose was further stated as extending the federal government's cost sharing "to assist the provinces in responding to the changing social and personal needs of Canadians." (Health and Welfare Canada, 1977).

The Act offered many potential improvements over the welfare services provisions of the Canada Assistance Plan. Accordingly, it was well received by the welfare field across Canada, including Alberta. Social welfare agencies had, indeed,

been critical of the long delays between the announcement of the programme in April 1975 and its legislation over two years later.

Enactment of the legislation, promised for the fall of 1977, was again not realized. In September, just before Marc Lalonde was moved to a new portfolio, (to be replaced by Monique Bégin) he wrote to the provincial welfare Ministers to inform them that the Bill would be withdrawn and would be replaced by a new measure containing the same general provisions as Bill C57 but financed on a different basis. The shared-cost approach involving provincial adherence to federal conditions would be replaced by block-funding involving essentially unconditional block grants to the provinces.

Block-funding had already been adopted in the Established Programs Financing Act (EPF) for federal sharing in health and post-secondary education costs. Block-funding was an approach favoured both by the provinces and the federal government for those two programmes. The provinces sought it for the greater flexibility it offered them in running their programmes and the federal financial authorities promoted it because it could be linked to some predictable measurement tool like the gross national product. In this respect it contrasted with the "open-ended" and less predictable character of the shared-cost programmes.

Marc Lalonde, having worked with the provincial governments on the EPF arrangements, felt that extending the block-funding approach to social services would be generally acceptable. He had other reasons for proposing the change. The Minister of the newly-elected Parti Québécois Government of Quebec, Dr. Denis Lazure, had stated categorically in June 1977 that Quebec would never agree to Bill C57. Similarly, Ontario was backing away from its earlier agreement on the Social Services Act and was beginning to express its opposition to a new shared-cost programme. With the prospect that the two largest provinces, and possibly Alberta, might decline to enter into agreements under the proposed legislation, the Minister had to consider whether the Social Services Act could operate effectively.

Before dispatching and making public his letter to the provincial ministers, Marc Lalonde sent his Deputy Minister and another senior official to visit each province concerning the proposal. It is reasonable to suppose that they reported a favourable climate for the changed funding basis.

Against that background, the initial reaction of the provinces seemed surprising. By coincidence, the Conference of Provincial Ministers of Social Services met in Edmonton shortly after Marc Lalonde's announcement of the proposed policy change. As described in the 1977-78 Annual Report of Alberta's Department of Federal and International Affairs, "all provinces were concerned about this abrupt change in direction" and "criticized the lack of consultation and negotiation prior to the federal announcement" (Alberta, Department of Federal and Intergovernmental Affairs 1977-78, 19). Their criticism, which was highlighted in the Conference communiqué and received nationwide publicity, obscured the ministers' actual positions on the proposed change.

During the period between the Edmonton meeting and the federal-provincial meeting of Ministers of Welfare in March 1978 there was a good deal of behind-

the-scenes maneuvering. It appears, from informed reports, that some provincial ministers were reluctant to agree to the new block-funded proposal because they believed that it was unwise to abandon the shared-cost approach; that the Quebec Minister was loathe to agree to any programme respecting the social services involving the federal government; and that other provinces were concerned about whether the financial terms of the proposed measure were more or less advantageous to them than those under the existing Canada Assistance Plan.

Alberta chose to raise a different issue. The province stood to gain financially under the new proposal but the minister and her officials initially objected to it on the grounds that the conditions the provinces were required to meet were excessive. There were, in fact, essentially three conditions. The first was designed to prevent a province from imposing a provincial residency period before new arrivals could qualify for a provincial social service. The second required the province to acknowledge the federal financial contribution to social service programmes in all provincial information. The third condition required the provinces to provide the federal government with statistical and other information on the social services they were providing. This information would be collected for two purposes: to make it possible for the federal minister to report to parliament on the extent to which federal expenditures were effectively promoting the goal of meeting Canadians' need for social services, and to provide comparable data on social services for research and analysis on a national basis.

It is of interest to note that while the Province of Alberta was objecting to the conditions on the provinces under the proposed block-funding measure, many in the voluntary welfare sector were expressing deep concern about the insufficiency of these conditions and arguing that block-funded social services legislation would, by its very nature, fail to meet the objective of creating strong social services in all parts of Canada. Representative of the voluntary sector's views were those expressed by Philip Hepworth, in debate with Monique Bégin, in *Perception*, the journal of the Canadian Council on Social Development. Philip Hepworth's skepticism about the capacity of a block-funded measure to ensure compliance with any meaningful standards now appears to have been amply justified by Canada's experience of block-funding for health and post-secondary education. As Hepworth contemplated the weak conditions in the proposed block-funded measure his advice was to "stick with the Canada Assistance Plan for the time being and try again!" (Hepworth 1978,4).

During the actual federal-provincial meeting in March 1978, the objections and concerns of certain provinces were subordinated to the desire of all the provinces and the federal government to achieve consensus. Accordingly, with unanimous provincial agreement, Monique Bégin placed the new block-funding measure before Parliament in May 1978. It was called the Social Service Financing Act, Bill C55, and was described as a measure to provide increased funding and greater flexibility to the provinces in their provision of social services (Health and Welfare Canada 1978). The attitude of Alberta's Minister of Social Services and Community Health toward the proposed legislation was revealed in an exchange in the provincial legislature following the federal-provincial meeting in March 1978. Miss Hunley

stated that the agreement provided for an arrangement that was a significant improvement over the previous shared-cost arrangement. She said that "it meant that we are masters in our own house when it comes to the design of the programs and the reporting." She also referred to the province benefitting financially "to a rather dramatic extent" and stated that Alberta would receive \$33 million in new money in 1977-78 and \$56.6 million in 1979-80 when the programme "really takes full effect" (Alberta 1978, 82).

The Minister gave no indication of how the new resources secured under the programme would be used. That this federal-provincial measure provided for the allocation of resources for "the provision, development, extension and improvement of social services throughout Canada"⁵ was not mentioned at any point in the Minister's remarks in the Legislature. She stated that block-funding, though preferable to shared-cost funding, was Alberta's second choice; the Government's strong preference would have been for the federal surrender of further tax points.

The Social Services Financing Act, like its predecessor the Social Services Act, got no further through the Parliamentary process than first reading in the House of Commons. In the summer of 1978 the federal government, in the name of fiscal responsibility, cut back on a broad range of expenditures including its various payments to the provinces. Prime Minister Trudeau offered the provinces the choice of accepting a lowering of the sharing formula under the Established Programs Financing Act or foregoing the prospective resources under the Social Services Financing Act. The provinces, including Alberta, accepted the second alternative and the federal-provincial social services initiative of 1975-78 died without having been born.

The programme's demise was referred to matter-of-factly in the 1978-79 Annual Report of the Alberta Department of Federal and Intergovernmental Affairs (p. 29). It went unnoticed in the Provincial Legislature and drew no comment in the annual report of the Department of Social Services and Community Health. This is not surprising; during the whole period of the Social Security Review from 1973 to 1978 there is but one reference to the Review in the Reports and that only to the studies conducted by the departmental research division.

Factors which invite comment because of their effect on Alberta's relationship to the Review are the economy, the general state of federal-provincial relations, the traditional attitudes of Albertans toward social welfare and the pressures exerted by the voluntary sector.

From 1974, the year after the beginning of the Social Security Review, until 1983 was, for Alberta, a period of highly expansive economic growth. The average year-to-year increase in the gross domestic product (GDP) in that 10-year period exceeded 20 per cent. In each year Alberta's GDP exceeded that of Canada as a whole by a ratio varying from 1.3 in 1973 to 1.52 in 1981 and 1982. In dollar terms, the per capita GDP showed an uninterrupted rise from \$7,648 in 1973 to \$23,498 in 1983 (Alberta, Treasury 1983, 11).

Increasing wealth of this magnitude could not fail to affect the attitude of Albertans and their government to many matters, including social welfare. The need for

external funding for any important purpose clearly declined. If the Alberta government found conditions attached to such external funding at all onerous, it was clearly in a position to "go it alone." As we have noted in the case of the social services proposals, Alberta went along with the other provinces in agreeing first to the shared-cost measure and second to the block-funded version. But of more significance than that acquiescence was the province's apparent lack of interest in the outcome of these proposals. The province was prepared to continue with the limitations of the Canada Assistance Plan because it had lost interest in obtaining new federal money carrying with it at least a moral commitment to the expansion and improvement of social services.

The province's declining interest in a new and somewhat costly federal initiative may be attributed to an emerging realization of how Albertans were affected by federal expenditures. For most of its history Alberta had been a "have-not" province, receiving federal equalization payments. By the late 1970s it was one of the two wealthiest provinces, and as such was a source of the equalization payments to the poorer provinces. Federal initiatives were then viewed as burdens that those with taxable wealth and income had to carry. Far from wanting to be involved in federal government programmes or to be the source of wealth to aid other parts of Canada, a small but vocal fringe group of Albertans began to assert that the province should take advantage of its wealth and capacity to form a separate state, independent of Canada.⁶

If the province's expanding economy and growing wealth reduced Alberta's inclination to participate in nation-wide social welfare, the conflicts that developed during this period between the provincial and federal governments were also contributing factors. The federal government's energy policies, and especially the domestic and exported fuel pricing policy, caused the most serious disputes. But in the very years, 1975-76, when agreement was being sought on the most complex of the strategies of the Social Security Review several new issues increased the animosity between Ottawa and Edmonton. Professor David Elton has identified these as Alberta's purchase of Pacific Western Airlines, "the scope of powers given the Anti-Inflation Board, the patriation of the British North American Act, Canada's trade policies, and the more general problem of the federal government's possible preoccupation with Quebec at the expense of Alberta" (Elton 1979, 126).

Although there were few visible indications that these disputes seriously influenced the discussions on the Social Security Review they could hardly have failed to affect them to some extent. It was from the provincial ministers' conference held in Edmonton that the much-publicized communiqué was launched attacking Marc Lalonde for his actions in a portfolio he no longer held. Although the site of the conference may have had nothing to do with the recriminatory nature of the communiqué, an attack "from Edmonton on Ottawa" seemed in character during a period when mutual recriminations between the two capitals were common.

A further factor in lessening the Alberta government's commitment to federal-provincial social welfare endeavours is found in the predominating attitudes of Albertans on social issues — attitudes that differ to a degree from those of other Canadians. The validity of this proposition cannot be established here. But some examples to support it can be drawn from nearly every post-war decade: the federal

reconstruction plans of the mid-1940s were attacked by Alberta, not only for their effect in reducing provincial taxing powers but for their prospective importation of welfare state concepts; Dr. Charlotte Whitton's nationally-publicized inquiry into Alberta's child welfare practices was viewed by many Albertans as an attack by an outsider from the East who was advancing ideas foreign to the province's established values; the province delayed signing an agreement under the federal-provincial unemployment assistance programme because Albertans did not want to agree to grant assistance to persons without long-established provincial residence; the province signed only under strong protest; the medical care agreement providing for publicly-administered medical services; in the late 1970s, the province's "workfare" programme, that violated the spirit of the Canada Assistance Plan and was out of tune with the practice in other provinces, had extensive support in Alberta; the provincial welfare department's decision, in 1985, to authorize the use of corporal punishment by foster parents to discipline wardship children in their care — a policy no longer adopted in other provinces but in harmony with the accepted values and practices of Albertans (Splane 1985, 173-186).

The voluntary sector of the social welfare field in Alberta might have been expected to hold different views on social issues than the predominating attitudes of Albertans. It might further have been expected that the voluntary sector would have expressed strong interest in the Social Services Initiative, would have called repeatedly for accelerated action on its implementation, would have expressed concern about the lost potential for national standards with the change from shared-cost funding to block-funding and would have been distressed when the Social Services Initiative was summarily terminated in the fall of 1978.

But evidence to support those expectations is hard to come by. In his work, "Citizen Involvement in Public Policy-Making: Access and the Policy-Making Process," Henry Chapin referred to the problems of the welfare field in trying to understand and influence the negotiations between the federal government and the provinces on all aspects of the Social Security Review. In his survey, Chapin found that after 1974 — the period when the Social Service Initiative came to the fore — "the promise of involving the public or at least the relevant, non-government bodies never happened." He observed further that "non-government organizations could only wonder what was really going on and whether it had anything at all to do with the much heralded need for a new social security system" (Chapin 1978, 117).

In referring to the situation in Alberta, Chapin made the following comments:

Provincial bureaucrats made no special efforts to inform social agencies about the SSR though some agencies did have specific concerns in the areas of services to the handicapped. The agency communities in Edmonton and Calgary seemed particularly disorganized with no group taking a leadership role with regard to monitoring provincial policies. Most agencies were primarily concerned with their own funding situation and claimed that provincial bureaucrats were not receptive to advice from the voluntary sector (Chapin 1978, 124).

The advice offered by the voluntary sector and its lobbying pressures could easily be denigrated by the provincial government as self-serving, if they came from a professional organization like the Alberta Association of Social Workers, or as local axe-grinding if they came from a social planning council in one of the cities. The resulting ineffectiveness of the voluntary sector in promoting broad policy matters like the Social Services Initiative draws attention to the lack of a province-wide social planning council.

The voluntary organizations also faced the question of where to direct their calls for action. The provincial government could, if it were called upon to do so, justifiably state that it had agreed to the proposed federal legislation but was unable to act on it until the measure had been passed by Parliament and until the province could enter into agreements. The Social Services Initiative offered any province that lacked a strong commitment to expand and improve its social services with a reason for inaction — federal procrastination.

It is doubtful if the Alberta government was under sufficient pressure from the voluntary sector to defend its social services record through ascribing either its action or inaction to the Social Security Review. The reports of the Provincial Department of Social Services and Community Health contain no discussion of the question and neither do debates in the Legislature. In any event, if the Department had felt any obligation to defend its record in developing social services between 1975 to 1979 it could have mounted a credible case based on the expanded services under the Preventive Social Services Program. As noted earlier, the Preventive Social Services Act had been passed in the mid-1960s and was widely regarded as a social welfare measure of great promise. It sought, through provincial sharing, to encourage the municipalities and, through them, voluntary social service agencies, to develop or improve personal and community social services required to meet the needs of the people in the more complex society that had emerged in the post-war period. The PSS programme had grown slowly until the mid-1970s but, during the period when the federal-provincial Social Services Initiative was being discussed, it expanded rapidly. According to the Department of Social Services and Community Health *Annual Reports* (1975-76; 1976-77; 1977-78; 1978-79) provincial expenditures under the programme grew from around \$8 million in 1975-76 to over \$20 million in 1978-79.

There is little evidence, however, for a close link between the Social Services Initiative and the rapid expansion of the PSS programme. The most that could be claimed is that the federal-provincial discussions on the Social Services Initiative drew attention to the types of social services being developed in Canada to respond to changing social needs. The documentation prepared by federal officials for Bill C57 and Bill C55 was the result of extensive discussions with provincial officials. The process revealed that the decade between the development of the Canada Assistance Plan and the development of the Social Services Act had witnessed substantial advances in perception of the needs for personal and community social services and the kinds of programmes required to meet them.⁷

The effect the Social Services Initiative may have had on later social services developments in Alberta can only be speculated. In addition to the expansion of the PSS programme in the mid-1970s, there were other promising trends and

developments. These were revealed in *Alberta Social Services and Community Health: Its Programs and Their Development*, a departmental document written in 1979, primarily by Geoff Norquay in collaboration with senior officials in the Department, under the direction of the Chief Deputy Minister, Stanley Mansbridge. In considering what course the Department should follow in the years ahead, the document reviewed the existing programmes, identified the values of the Alberta community that ought to undergird Department policies and proposed two main strategies for the Department. They were "a commitment to meet the demonstrated needs of Albertans with social programs of at least as high a quality as those available elsewhere in Canada; and an emphasis on community programmes as an alternative to institutionally based programs" (Alberta, Department of Social Services and Community Health, 1979).

The thrust of the departmental document was to build on the progress made since the late 1950s, to recognize the changing needs of a population just reaching two million, and to raise to creditable standards the quality of Alberta's social programmes.

With the advent of a new Minister following the election of March 1979, however, there was a sharp change in how the Department established its policies, set its goals and administered its programmes. The Minister during the third Lougheed Government, which lasted until the fall of 1982, was Bob Bogle. His ministry was characterized by policies that were out of harmony with accepted social welfare practice, by abrupt changes of policies and procedures, by organizational changes that left no recognizable lines of authority and, most seriously, by the dismissal or dispersal of qualified and experienced senior officials.

These characteristics of this regressive period in the Department's history were identified by the Board of Review chaired by Mr. Justice James C. Cavanagh of the Court of Queens Bench of Alberta (Board of Review 1983). The Board, which was appointed in 1980 and submitted its report in 1983, felt obliged to draw attention to these broad administrative questions because its specific recommendations respecting child welfare could not be effectively implemented unless the Department adopted rational organizational, personnel and management policies.

It is too early to assess the development of social services in the fourth Lougheed Government formed following the election of November 1982. The Minister, Dr. Neil Webber, in dismissing his Deputy Minister of Social Services, D'Arcy Coulson, seemed to be following the deplorable example of his predecessor. Mr. Coulson, who had a distinguished record in previous positions, had been brought into the position in 1981 in an attempt to restore the professional and managerial leadership lost during the first two years of the third Lougheed Government.

A more favourable omen of how the Department is addressing its social services responsibilities is provided in its handling of the Case Management Review by Dr. R.J. Thomlison, Dean of the Faculty of Social Welfare, The University of Calgary. Dr. Thomlison was given a clear mandate to carry out an independent inquiry. As in the case of the Cavanagh Review, the Thomlison Review deals with child welfare issues. And, like its predecessor, it covers a broad spectrum of organizational,

administrative and professional matters. The Report directs attention to the complex range of factors affecting the provision of social welfare services of an acceptable quality. By publishing, in September 1984, a fairly comprehensive response (Alberta, Department of Social Services and Community Health 1984) to the Thomlison Report, indicating the actions it is taking on its recommendations, the Department has indicated that it is working toward the "goal of providing responsive and sensitive care to children and their families," and, by implication, to the other clientele under its mandate.

This brief examination of the ten years since Alberta, the federal government and the other provinces hailed the proposed Social Services Initiative as opening a new era in the development of social services in Canada, has not established that the Initiative affected social services in any clearly discernable way. Though the initiative was supported, at the outset, by senior officials in ASSCH, notably Bruce Rawson and Duncan Rogers, little interest can be detected after it was delayed in 1976 and 1977. With the dismissal, in the third Lougheed Government, of senior ASSCH officials who had direct knowledge of the Initiative it is, at most, recalled in the Department as a "non-event."

An inevitable concluding question is whether there can ever again be a nationwide endeavour involving the federal government and all the provinces to expand and improve personal and community social services.

The Alberta of 1985 might seem to be one of the least likely jurisdictions to generate or to join so improbable a venture. It should be recalled, however, that Alberta's participation in the 1970s was not entirely predictable. Moreover, the post-Lougheed era might find a new Alberta Government which seeks to give Alberta both a new image and a new reality in which humane values, expressed through comprehensive and accessible social services, are given a higher place in Alberta's order of commitments.

NOTES

1. The Orange Paper did not give prominence to social services. Its principal author, the new deputy minister of National Welfare, A.W. Johnson, had also played a leading role in developing a federal working paper for the Federal-Provincial Constitutional Review 1968-1971. It was entitled *Income Security and Social Services* and, among its proposals, it advised that the provinces "ought to have exclusive jurisdiction over social services." In his new role Mr. Johnson may have found it difficult to employ the term "social services" unless he could link it with a concept with which the federal government's constitutional position was stronger. The Orange Paper accordingly used the term "a social and employment services strategy." Once the Social Security Review was underway, however, the term employment was dropped and the term "social services" was increasingly seen as including a wide range of personal and community social services, most of which were not linked closely to employment.

2. A copy of a memorandum from R.B. Splane to Bruce Rawson dated April 16, 1973 is in the possession of the writer.
3. Duncan Rogers was identified with Alberta's Preventive Social Services Program which had attracted some national attention. He had also been involved in the development of the Canada Assistance Plan, which has been described as the best example on record of federal-provincial amity and cooperation.
4. Henry Chapin, "Citizen Involvement in Public Policy-Making: Access and the Policy-Making Process." *Issues in Canadian Social Policy*. Ottawa, Canadian Council on Social Development, 124. Chapin remarks that, "as a 'rich' province, Alberta did not want to be viewed by other provinces, especially in Atlantic Canada, as greedy."
5. From the full title of Bill C55, the Social Services Financing Act, 1978.
6. Movements for the separation of all of the western provinces from Canada or for Alberta's secession appeared to derive their strongest support from those who also had strong anti-government and anti-welfare views. The Alberta movement probably reached its peak with the election of a separatist candidate to the Alberta legislature in a by-election in February 1982. It lost credibility in the general election in the fall of that year.
7. The material presented by Health and Welfare Canada with the tabling of Bill C57, 1977 and Bill C55, 1978 provides a succinct source of data on this point.

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TWO

THE REVITALIZATION OF COMMUNITY ENTERPRISE: THE ALBERTA CASE FOR "PRIVATIZING" SOCIAL SERVICES

Perry S. Kinkaide

Alberta could not have been built at any cost without the contributions of the pioneer, the entrepreneur, and the volunteer. The voluntary exercising of personal, family, and community social responsibility is part of Alberta's proud heritage.

This chapter is about Alberta and the "privatization" of public social services. It is argued that the transfer of public responsibility for social service delivery to the non-public sector should consider inclusion of both the for-profit and voluntary sectors. This broader perspective of "privatization" is identified as "the revitalization of community enterprise." This orientation is more compatible with the history and culture of social services, offering a broader opportunity for full participation of all sectors of society, and for achieving a number of mid- and long-term socio-economic objectives.

The chapter is organized as follows:

1. Recent history.

The recent history of Alberta's public social services has two stages: a period of growth and prosperity and a period of increased service demand and service productivity. Incremental growth is attributable to several forces including inflation and unemployment.

2. Future.

There are various forces transforming the overall socio-economic environment. These forces are complementing the drive for service efficiency and effectiveness

and for reducing the involvement of government in public service delivery while retaining government responsibility for the redistribution of wealth and for ensuring health and welfare to a prescribed standard.

3. Revitalizing Community Enterprise.

The revitalization of community enterprise is discussed as the application of "privatization" in the social sector. It is recognized as a further extension of decentralization, reflecting government's intent to reduce its direct intervention in personal, family and community health and welfare. Strategic options are explained for each social service line. Illustrative examples are noted.

4. Planning and Implementation.

The staging of a transfer, the implications, and a general tool for assessing the readiness and feasibility of a service for transfer are discussed.

RECENT HISTORY

Growth and Prosperity: 1970-1979.

Over the last fifty years the provinces have acquired broad responsibility for ensuring the social welfare of their citizenry. Service coverage has been expanded, equity of access has improved, and the number of programmes has escalated . . . with ever-increasing expenditures. As social services have become public services, their financing has been guaranteed through the government's power of taxing personal and corporate wealth. Public wealth is typically redistributed in the form of pensions, benefits, and allowances to individuals or to other jurisdictions. A significant portion of public wealth, however, is retained within government to finance staff-intensive direct service responsibilities.

Incremental growth in service coverage, budget expenditures, and the overall size of Alberta's Department of Social Services and Community Health was apparent for all programmes throughout the 1970s. These programmes include financial assistance, social assistance, community service, and residential services. Overall budget expenditures grew from approximately \$90 million per year in 1970/71 to \$475 million per year by 1979/80. The department's overall staff complement increased during this period from under 1,500 to 8,000.

Incremental growth in the 1970s is attributable to several factors: the department's assumption of service responsibility from other jurisdictions, deinstitutionalization and the development of comprehensive community services for the handicapped, inflation and its impact on the cost of living and manpower-intensive services, and the development of a health and social service infrastructure to accommodate societal pressures during the rapid development of Alberta's natural resources.

Increased Responsibility

The responsibilities assumed by the department from other jurisdictions accounted for over 4,500 of the 6,500 man-year increase in the department's overall staff complement during the 1970s.

The responsibility for serving young offenders was assumed from the Attorney General's Department in 1970 (and transferred to the Solicitor General's Department in 1984). The Department of Health Services — including mental health, preventative and community health services — was integrated in 1971 with the Department of Social Development bringing with it Alberta Hospitals: Oliver and Ponoka serving persons with mental illness. Also transferred was responsibility for Alberta School Hospital and Deer Home in Red Deer accommodating mentally retarded children and adults, respectively. Also in 1971, the department assumed direct responsibility for the administration of financial assistance programmes, formerly administered by municipalities.

During this same period, housing and rehabilitation for senior citizens and Métis were transferred from the department.

Expenditures for newly-assumed responsibilities represented more than 20 per cent (over \$100 million) of the \$385 million per year increase in expenditures during the 1970s.

Deinstitutionalization

The assumption of responsibility for a number of institutions was accompanied by a commitment to deinstitutionalization through the development of community service alternatives. The Blair Report, released in the early 1970s, called for a reduced reliance on provincial institutions and increased regional and community services for persons with mental retardation and mental illness. The Klufas Report, released in the early 1980s, highlights the transformation which occurred during the 1970s in services for persons with mental retardation: the population of the provincial institution (Michener Centre) was reduced from 2,400 to 1,650 beds while overall government expenditures increased from \$63 million to \$641 million for the handicapped as an array of community, family, and personal service supports were established. This led to a broadening of responsibility for the handicapped and a normalization of their lifestyles.

Inflation

The Consumer Price Index almost doubled between 1970 and 1979 (and almost doubled again by 1985) adding more than 40 per cent (over \$200 million) to the department's annual expenditures by 1980. Expenditures were increased to maintain the level of financial assistance in the form of pensions, benefits, and allowances for Albertans dependent upon the department. The cost of supplies and services for the administration of the department's programmes was also increased. Significant salary and benefit adjustments were negotiated for several thousand staff engaged in the department's administration of public services in the 1970s.

Service Coverage

During the 1970s, increased migration to Alberta contributed to an increase in the province's population from 1.6 to 2.1 million (increasing to 2.3 million by 1982). The province strengthened its social service infrastructure during this period of rapid economic growth and social development by almost doubling the number of District

Offices across the province, thereby improving service access, particularly for those centres experiencing the most rapid growth. These offices afforded the public with access to programmes of social and financial support.

The opportunities afforded by the buoyant economy absorbed those migrating into Alberta and maintained a low unemployment rate — averaging below 4 per cent in 1979/80 and a high participation rate — 67.2 per cent. These factors helped suppress any increase in demand for financial assistance. The average number of recipients per month of social assistance — while varying over the period 1970 to 1979 — was essentially the same in 1979 as in 1970 at 29,000 versus 32,000 per month.

The most noticeable change in the recipients during the 1970s was an increase in the proportion of single women. However, any increase in the volume of recipients was offset as clientele were transferred from the social allowance programme to a broadened pension programme including the aged and severely handicapped. Introduction of the day care programme in 1978 and subsequent day care subsidies also helped to increase the participation of women in the workforce.

Although the number of financial assistance recipients remained relatively stable, the level of expenditures for financial assistance grew from approximately \$69 million to \$170 million, reflecting the impact of both inflation and expanded coverage of the pension programmes. The number of pension recipients increased from 9,000 to over 85,000 between 1970 and 1979 with expenditures in this area increasing from \$3 million to over \$41 million by 1980.

In 1970, 8,400 children were in care through Child Welfare programmes; this number was essentially the same in 1979 with 8,900 children in care. Expenditures, however, in the area of child welfare increased dramatically from \$8 million to \$45 million per year. This increase reflects, in part, a broadening of provincial support for single-parent families and families with handicapped children.

The role of municipalities in preventative community health and social services also expanded throughout the 1970s. Grants to local health authorities for preventative health services increased during the 1970s to \$40.7 million while grants for preventative social services increased from \$2 million to \$19.7 million by 1980.

Clearly, substantial gains were achieved in the 1970s, lending support to government claims about the modernization of Alberta's social services. The safety net, in combination with economic growth and prosperity, made a unique contribution to the stability of the province during this period of exceptional socio-economic development.

The growth in social services, so evident during the 1970s, was attributable to inflation, a strengthened provincial social infrastructure, and broadened departmental responsibilities. The turbulence of the 1980s has been, in part, a response to the province's recent past and a restructuring of services for its more immediate future.

Increasing Productivity: 1980-1985

The 1980-1985 period is one of the most turbulent in the province's young history. In the early 1980s, optimism was running high with prosperity anticipated into the

foreseeable future. The only significant blemish on the economy was double-digit inflation which added another \$377 million to the doubling of departmental expenditures to over \$1 billion by 1985.

Inflation was not the only issue of concern in the early 1980s. After a decade of steady growth, it was apparent that programme reshaping would lead to gains in service quality and that organizational restructuring would lead to gains in service efficiency. The department, in other words, was overdue for an efficiency "check-up." In April 1981, the Alberta provincial government proclaimed its intent to regionalize departmental operations. Increases in service responsiveness, access, and coordination were realized through establishing a clear locus of decentralized service and resource authority. Responsibility was segmented to six regional directors to improve the overall management of the department's greatly increased service and resource responsibility.

These organizational adjustments in an environment of entrenched inflation were followed almost immediately by an international recession and the federal government's National Energy Program. Departmental caseloads, generally comparable in 1980 to those in 1970, swelled. The dramatic rise in unemployment from under 4 per cent to over 12 per cent led almost immediately to an increase in the number of social allowance recipients, topping 50,000 per month with the greatest increases in employable persons and single parents. Expenditures in this area alone rose from \$180 million to \$440 million between 1980 and 1985.

Expenditures in child welfare had continued to increase from 1980 through 1983 although decreases have been evident in the last two years. Child welfare has also been an area of increased community interest, particularly among natives seeking resumed responsibility for child welfare. New child welfare legislation is expected to further strengthen family responsibility in the domain of child welfare, provide clearer guidelines to ensure minimum state intervention, and further clarify the province's role as the public child guardian.

The following section highlights gains which effected an increased service productivity during the period of increased service demand. These gains, in general, reflect an increase in the corporate consciousness to manage resources without sacrificing public service quality.

Regionalization

The department embarked on a decentralization of its programmes and resource management in April 1981 to improve service responsiveness and to match programme and resource authority and responsibility, without substantially increasing the department's overall man-year allocation. This has been achieved.

Reallocation

Supplementary revenue has been warranted because of increased demand for financial assistance to maintain the purchasing power of single parents, pensioners, and the recent unemployed. Otherwise, reallocation strategies have proved effective in helping to improve the overall use of existing funds. In fact, regionalization

of programme and resource authority strengthened control over expenditures. Hence, public service quality has been maintained while the growth rate of expenditures has been contained.

The need for increased productivity has been inculcated in the department. Staff are increasingly conscious of the department's finite resources. This organization, like many others in government, has recognized that "increasing productivity" is complementary to the department's mandate to help individuals, families, and communities assume responsibility for their health and welfare.

Service Growth and Hiring Restraint

Though child welfare caseloads have recently been decreasing, an increase in expenditures and an associated increase in caseloads of other programmes have been accommodated without additional staffing. Increases in the number of applications processed, caseloads, and the total benefits expended have increased the workload for staff and systems delivering social allowance, pensions and benefits programmes. The department now handles approximately 50 per cent of all account payments made by government. Increased productivity has been achieved through increased automation, consciously less complex administrative processes, forms simplification, and an increased use of auto-pay for social allowance recipients, thereby increasing the case-handling capacity of staff.

Downsizing

The size of the department peaked in 1981/82 at more than 9,100 man-years. As a result of the transfer of resources to other departments and man-year reductions from 1983 to 1985, the department's man-year complement now stands at just over 6,500 man-years. The revitalization of community enterprise (e.g., native child welfare) may be expected to have additional impact in the coming years.

Responsibility Transfer

The department has recently transferred service responsibility and associated resources to other departments. More recent transfers have included Alberta Hospitals: Oliver and Ponoka to boards under the Department of Hospitals and Medical Care. This alone resulted in man-year reduction for the department of more than 1,600 positions for 1983/84. In 1984/85, more than 175 man-years were transferred to the Solicitor General's Department to implement the Young Offenders Act. These actions, accompanied by a general commitment to downsizing, have reduced the department's man-years from more than 9,100 to 6,500.

Health and Safety

Issues of employee health and safety must be a continuous concern in a department with such great manpower and particularly when manpower is concentrated in institutions where the instance of injuries from, for example, client lifting is significant. There has been a reduction in the frequency of accidents, a consequent

reduction in the number of employee days lost, and a reduction of the total financial compensation required for injured employees, reflecting enhanced employee welfare and service productivity within the public sector.

Automation

The department has also strengthened its commitment to productivity by introducing electronic data processing in the highly routine, paper-intensive areas of social assistance, mental health, and child welfare. Automation — particularly in support of frontline staff — is expected to further relieve staff of the routine administrative paperwork, allowing them to attend to personal service quality. Automation recently introduced in child welfare is speeding up the processing of information for social workers in this most sensitive of services. Remote data entry has been achieved in administering the financial assistance programme at District Offices and in assembling the department's budget through its decentralized operation.

Resource Restraint

Increases in administrative overhead and manpower expenditures have also been restrained. These expenditures have been stabilized in spite of large salary settlements in 1982/83 and the establishment of a regional administrative structure.

Community Services

The department remains committed to the development of comprehensive, community-based services and to the use of existing generic services as an alternative to institutional care. Such services are deemed more responsive to local needs, more actively fostering volunteerism, and should, therefore, offer higher quality service at a lower cost.

The department has expanded its reliance on community services provided through grants (\$224 million in 1985/86) to non-profit societies, local health authorities, and municipalities and through contracts (\$101 million) to children's care homes and professional, labour, and technical service support. These funds help maintain the community service base in areas of child welfare (\$78.6 million), vocational rehabilitation services (\$17.9 million), services for the handicapped (\$46.3 million), mental health services (\$12.7 million), associated general health (\$10.3 million) and community health and social services (\$150.7 million). This expenditure of \$325 million — representing 26 per cent of the department's budget — in transfer payments to municipalities, community agencies, and the commercial sector reflects the mixed approach for achieving an efficient and economical system of service delivery.

The commitment to community service is complemented by \$637 million (50 per cent) in transfer payments to individuals and families in the form of pensions, benefits, and allowances in 1985/86.

The remainder of the budget (\$294 million) is for direct service delivery and associated programme and administrative supports. These services are under review to determine if additional efficiency may be realized through having them delivered

by the non-public sector. Further expansion of the non-public sector in service delivery depends on: (1) the presence of community enterprise, (2) the assembly of a good business case, and (3) the development of cost and quality standards.

Additional Measures

A range of additional long-term measures are being investigated — including more formal and long-range human resource planning, modernization of information processing and communications, streamlining of over-regulated programmes, and reshaping or refocusing of programmes to improve their effectiveness. The department's management processes are also under review. These measures are aimed at achieving further gains in service quality and enhanced service productivity. Savings in time and resources allow resources to be reallocated for further improving service quality and further broadening the coverage of the department's service benefits.

FUTURE

Forces of Change: 1985 to the Future

Growth in the department's resources and responsibilities characterized the 1970s. Increasing productivity is dominating the 1980s as a response to the decade of growth and the need to increase service efficiency and effectiveness. The complexity of reorganization in the early 1980s was compounded by the economic downturn and associated calls for improved resource management. Further increases in productivity and broadened social responsibility can be expected as additional forces transform our socio-economic environment. Consider the following

- The welfare state which evolved over the last half century is under review. Federal revenue for public services is decreasing. Yet, the cost and demand — actual and forecast — for public services continues to increase. The locus of responsibility, and degree of associated direct intervention, of the state in health and welfare is also being challenged. At the same time, the implications of the Charter of Rights and its impact on roles and responsibilities are yet to be determined.
- Increased numbers of women in the workforce, relatively high rates of sustained unemployment, associated family and personal stress, and the aging of the population, are increasing the proportion of dependents in the population.
- Advances in computer technology and robotics as well as information processing are revolutionizing all dimensions of work, service, and play.
- Advances in genetic engineering, life-extending techniques in the medical sciences, and psychopharmacology may further change the mix of public service consumers and the services themselves. The impact of increased public awareness and concern regarding the incidence of socially transmitted diseases is uncertain.
- There is an increased international commitment to resolving issues of international trade, population growth, and associated resource and environmental conservation.

While some of these forces may serve to reduce the general demand for public service, the sum total of their impact is expected to amplify:

- the continuing need for increased productivity;
- the search for alternative, less intrusive, and less expensive public services; and
- the need to reformulate policies and practices which govern the relationships between individuals and institutions, rights and responsibilities, justice and order.

These forces of change may also be expected to affect the role and responsibility of the department in its delivery of social services. Funding for the existing array of services must be considered secure in light of the Alberta Government's White Paper's "Proposals for an Industrial and Science Strategy for Albertans 1985-1990" which proclaimed the government's "... resolve to continue to respond with a 'safety-net' to meet the needs of the elderly, the handicapped, the sick, the unskilled, and the disadvantaged" (p. 69).

REVITALIZING COMMUNITY ENTERPRISE

The revitalization of community enterprise in the social and economic sectors promises to carry forward the gains in social equity of the 1970s, offering additional gains in service efficiency and effectiveness through the 1980s. The Department of Social Services and Community Health is reviewing its operations to identify additional services which could be more efficiently undertaken by the non-public sector. This review is part of an on-going efficiency drive which commenced with regionalization in 1981.

Privatization

Privatization refers to the transfer of a publicly-operated service to the non-public sector. "Non-public" may include firms in the private "for-profit" sector and agencies in the voluntary "not-for-profit" sector. The enterprise of the non-public sector has been a major contributor to the development of community health and social services in the province. A revitalization of community enterprise may allow further efficiencies to be realized in the delivery of services which have remained part of the department's operation. This is expected to allow individuals, families, and communities:

- to play a greater role in identifying their needs and proposing solutions;
 - to become more fully involved in service development and delivery;
 - to achieve increased awareness of, and enhanced responsibility for, matters of community health and social support.
- ... thereby helping to regulate service quality and cost.

As governments have increased the contracting-out of their services, a considerable literature has developed regarding the effectiveness and economics of privatization. Savas (1982) notes an overall increase in service efficiency and service quality through increased service competition, improved management, a more appropriate mix of capital and labour and access to more mobile, flexible, and less expensive labour. Courchène (1985) notes additional financial measures which have been

entertained for increasing individual responsibility and the use of public services including, for example, user fees and the taxing of service benefits. And, Gorecki and Stanbury (1984) stress the importance of public policies which ensure the efficient allocation and reallocation of resources to where they will be most effective.

A careful review of existing programmes and funding policies is required for the department to consider increasing the involvement of the non-public sector in service delivery to realize gains in efficiency and service quality. Savas has identified a number of options for further privatization of public services including: conditional grants, contracts, franchises, vouchers, the establishment of boards and increased use of the marketplace, thereby encouraging individuals to make their own service purchase arrangements.

The most effective delivery systems are those allowing an efficient allocation and reallocation of resources in response to the changing nature of social needs. To embark upon privatization is to acknowledge that the non-public sector is at the "cutting-edge" of social and economic activity — the margin where decisions relating to rights and responsibilities, and personal and family adjustments, are made.

Increased privatization through an increase in community enterprise would broaden community, family, and individual responsibility for their own health and welfare. With a decreasing role in service delivery, the department would be expected to play an increasing role in ensuring socio-economic policy which respects the fair and equitable distribution of resources and the maintenance of service quality.

Case Studies

Community enterprise has been part of the department's experience during the 1970s and early 1980s. Its revitalization in the social and economic sectors will enable the department to transfer further public service responsibility for service delivery to the non-public sector. The following is a list of such initiatives:

1. Transfer to Boards:
Alberta Hospitals: Oliver and Ponoka
2. Deinstitutionalization - Community Service Development:
Michener Centre, Baker Centre, Wetaskiwin Centre, Rosehaven
3. Community Enterprise: Contracting-Out:
Native Councils, Child and Family Services, Institutional Food, Laundry and Housekeeping Services
4. Community Enterprise: Conditional Grants to Voluntary Sector:
Hillside Apartments, Resources for the Dependent Handicapped
5. Jurisdictional Transfer:
Legislation: Alberta School Act, Young Offenders Act, Child Welfare Act
6. Automation: Banking Institutions:
Alberta Widows' Pension

7. Support Services: Contracting-Out: Consultants, Research, Clerical Support

Strategic Options

Service delivery remains the principal function of the Division of Social Services. Increasing productivity and the decentralization of personal, family, and community responsibility for health and welfare is reshaping the Division's function into one of ensuring service to a prescribed standard.

There are several strategic options which will allow the department to further divest its involvement in direct service delivery. These options are included in one strategy termed "revitalizing community enterprise." The intent of this section is to review the department's involvement in service delivery and to identify feasible strategic options for further strengthening individual, family, and community responsibility in the interest of increasing service efficiency and effectiveness. The department would thus evolve into a role of ensuring service to a prescribed standard.

Financial Assistance

The department is expecting to distribute over \$637 million to more than 100,000 financial assistance recipients in 1985/86. The distribution system has become increasingly automated with more than 60 per cent of all recipients of the department's social allowance benefits on an automatic pay system. The distribution system, however, remains manpower-intensive, involving more than 500 clerks and social workers in more than 50 District Offices around the province. The programme offers individuals and families a means of maintaining their purchasing power under adverse health, social, or economic circumstances. Indeed, pensions, benefits, and allowances to the employable, and to the single parent, the disabled, the aged, and widows, is fundamental to the "safety-net," ensuring the social stability we have come to expect as individuals and as a society.

What is at issue is whether it is politically, administratively, and economically feasible to transfer responsibility for service delivery from the province to other jurisdictions and whether delivery needs to continue to be manpower-intensive given recent advances in electronic technology.

A strategic option under investigation in several areas of the country and internationally has been the increased use of financial institutions — the banks — in the administration of public programmes of financial assistance. This option is a timely one, given the rapid advances in interactive video-disk and banking technology and the banking industry's "multi-service" direction. By engaging an established industry in our communities, we may achieve a degree of service integration, with redeeming social and economic merit beyond what District Offices have been able to achieve. Segregating those in need of financial assistance according to social categories may have only served to further isolate the individual from the mainstream of community.

Social Assistance

The majority of social programmes for individuals needing support outside institutions take the form of information, referral, and counsel. This is the established domain of the voluntary sector and has been formalized under circumstances where services are highly specialized, the individual is in need of multiple services, or the individual is not competent to manage the search and scheduling of service, as is often the case for mentally retarded persons. Otherwise, this service is basically one of information exchange, requiring little, if any, government intervention.

Communities, special interest groups, and agencies are showing initiative to assume an increased responsibility in the delivery of social services. For example, native councils are making it increasingly apparent that they want responsibility for the administration of native child welfare. Such arrangements, currently under negotiation, reflect the general intent of the new child welfare legislation to achieve a more effective balance in the role and responsibility of the family and government. It is clearly this relationship between government and our social institutions of communities, families and individuals which is under review.

Residential-Treatment Service

This is a primary service engaging thousands of staff within most provincial government departments of Social Services and Community Health. The province of Alberta has, since 1970, been engaged in deinstitutionalization through the development of comprehensive community-based alternatives. Society has been showing an increased capability and willingness to accommodate special interest groups within its bounds whether we are referring to mentally retarded persons, persons in need of developmental support, persons with sensory disabilities, those recovering from mental illness, or homeless children, spouses, or transients. Jurisdictional boundaries and technological gains in medicine and rehabilitation have increased the accessibility of generic, community-based services of health and education for groups unable to gain access to such service in the past.

The review of jurisdictional boundaries is a continuing endeavour but one which appears to be clearly questioning the necessity for the operation of residential-treatment institutions through the state. The source of financing may continue to be taxation and the redistribution of public wealth. In summary, two strategic options to reduce the need for government to operate residential-treatment centres are evident; these options are: further deinstitutionalization guided by principles of preparing the person, preparing the community, and developing support systems, thereby enabling the individual and resources to be repatriated; and jurisdictional reviews likely to be facilitated by the new Charter of Rights. Many minority groups in special interest areas have become very sophisticated in mobilizing while others have just begun to assume responsibility. In the former instance, the field of mental retardation is well advanced in the development of comprehensive community services and reduced reliance on government-operated residential treatment. Funds have continued to shift from payment of civil servants in residential-treatment resources to grants to individuals (Alberta Assured Income for the Severely Handicapped), their families (Handicapped Childrens Services), and community

agencies, as a myriad of alternative residential-treatment supports have emerged within communities across the province. And more recently, the native community has begun to be heard as it seeks increased responsibility for child welfare services for natives, formerly the domain of government-operated residential-treatment facilities and government-designed foster care programmes.

Clinical Services

Where government staff maintain a caseload for the provision of clinical support, one can envision increased reliance on private practitioners and involvement of local and regional authorities in the provision of public "clinical" support.

On an associated topic, should government entertain the divestiture of direct clinical service, it will be important to assess the effectiveness of such services. Divestiture should not perpetuate the provision of publicly-financed — though privately-operated — services which are not effective or which may be fostering dependency, thereby eroding self-reliance.

Support Services

Maintaining the civil service is an expensive undertaking. The Department of Social Services and Community Health has over 175 worksites accommodating more than 6,500 staff at an operating cost of \$294 million per year. More than 1,000 of these staff are in a supportive capacity, in policy and programme development, evaluation and audit services, and operations support such as financial, administrative, personnel, and information systems services. Clearly, as service divestiture proceeds, a reduction in support staff must be entertained. In other instances, functions may be identified which can be more efficiently conducted by the private sector under a contracting-out arrangement.

PLANNING AND IMPLEMENTATION

The strategy which encompasses the full array of strategic options has been deemed "a revitalization of community enterprise." A vast literature has arisen in the last few years concerning government's capacity to fully control the socio-economic environment. Keynesian economists are finding that manipulation of the money supply and government spending is no longer effective in controlling inflation or recession. Social scientists are questioning the effectiveness and affordability of government intervention and spending through programmes of social intervention as a means of enhancing individual, family, and community responsibility for their health and welfare.

Should the role of government be viewed as a catalyst for social commerce, then Departments of Social Services and Community Health must find the ways and means of not only sensitizing their management to this transformation, but also of developing management processes for resource allocation to ensure service to a prescribed standard. Given this modified role, standards of service access, efficiency, and effectiveness must be developed and monitored. The issue is not whether

the public has the resolve to maintain the "safety-net," but whether gains in quality can be achieved while maintaining public service with fewer public servants.

Assessing the Feasibility of Privatization

As noted, privatization refers to increasing the involvement of the non-public sector in the delivery of a public service. Privatization is a public policy recognizing the social heritage of Albertans and their commitment to one another, to their families, and to their community. Privatization, or the revitalization of community enterprise in the social sector, is expected to have a range of implications on the department, and on Alberta in general. Privatization, is in effect, a vehicle for deinstitutionalizing service delivery with the following implications:

1. reduction in the cumulative impact of government growth, regulations and general intervention in the provision of social service and support within Alberta;
2. strengthening of service accountability and the adoption of provincial service standards of quality (maximum) and cost (minimum);
3. a strengthening of Alberta's market forces in social services — with a preference to "Buy Alberta" — thereby leading to an increase in inter-agency competition, a strengthening of service accountability, an increase in service quality and distribution, and a containment of costs;
4. a shift in the role of government from that of service delivery to that of ensuring service to a prescribed standard;
5. the development of a more creative, flexible, and innovative approach to service development and delivery;
6. a strengthening of the social service industry — particularly in rural Alberta — through job and service relocation;
7. an enrichment of work opportunities and of the working environment for employees in the expanded community social service sector;
8. increased opportunities for volunteers to participate in the community social service sector.

The message for public policy is clear. Let the market do what only it can do well: allocate human, natural and man-made resources to producers, and distribute goods and services to consumers. Let government do what only it can do well: maintain a legal and financial framework conducive to the smooth functioning of competitive markets, redistribute income to ensure a more just society, and use taxes and subsidies to eliminate differences between private and social costs and benefits. Let families and religious, philanthropic, and cultural institutions do what only they can do well: socialize the young, honour the old, transmit values, give texture and meaning to life, teach love, and inculcate faith in the possibility of human improvement (Fuchs, V.R., *How We Live*, 1983).

Achieving Privatization

The options for achieving privatization are many. E.S. Savas (1982) has provided a clear outline of the various options available for privatization including: self-service, service through vouchers, service through profit or non-profit corporations, service through franchises, a transfer of service to other government jurisdictions, and service through locally-elected boards.

The primary option being entertained for the privatization of social services is an increase in conditional grants and contracting services through the non-public sector. Both the "not-for-profit" or voluntary sector and the "for-profit" or private sector can be expected to participate by expanding their involvement in the community social service sector. The voluntary sector offers many advantages, not the least of which is its capacity to mobilize extensive voluntary support in the interest of service quality. The private sector, on the other hand, offers management strength and appeals to a certain entrepreneurial spirit with access to capital.

Privatization must be in keeping with the spirit of deregulation while offering an opportunity for reviewing and redesigning existing programmes. These twin objectives are in the interest of promoting a more productive, creative, flexible, and enterprising approach to service delivery. It would be accompanied by the development of necessary service standards and funding reform to strengthen the department's planning, budgeting, allocating, and control functions, including monitoring and negotiating. Funding reform would ensure that service delivery is maintained at prescribed quality and cost standards.

The public service employee can contribute to the quality of service in the private or voluntary sector because of his or her experience with departmental programmes and clientele. This point introduces one of the critical factors which will determine the degree of success of privatization: human resource planning.

Fundamental to success will be a continuation of service and service quality while affording public service employees with continued employment opportunities, either in the public or non-public sectors. Policies and planning in this regard must be carefully conceived and thoroughly communicated before a formal commitment to the privatization of any services.

For the department to transfer services it currently delivers, there must be initiative ("enterprise") from the non-public sector. This initiative will serve as a limiting factor on the rate of privatization and will be contingent upon increased public awareness of the department's intent and the ways and means to privatize. The department will require a clear mandate and communications plan for addressing the various interests of those groups affected by further privatization of the department's social services.

What and When to Privatize?

The answer to "why privatize?" is that it is in the interests of improving service quality, containing costs, and broadening social responsibility. As the department assesses the "privatize-ability" of its various services, it will be attempting to identify "what is privatize-able?" and "when is it privatize-able?" An assessment tool

has been designed for determining the "privatize-ability of a service." This tool will have several benefits:

1. To clarify the rationale for privatization.
2. To clarify what "privatization" means and is expected to achieve.
3. To clarify what is privatize-able and to assess a service's "readiness."
4. To identify what additional preparations may be warranted to increase the privatize-ability of a service.

An Assessment Tool¹

The environment conducive for privatization and the desirable and undesirable consequences of privatization were identified. Point assignments for associated criteria yielded a maximum total of +100 and minimum of -85. Assessments yielding a score in excess of +65 would appear to be prime candidates for "privatization." Caution, however, should be exercised in considering the "privatization" of a service with less than +30 points.

An assessment will indicate those areas requiring adjustment to increase a service's readiness for privatization. The assessment will also help clarify the goals of privatization for a group or organization engaged in the assessment.

A group or organization is encouraged to review the weightings assigned to each criteria and to revise them to reflect the group or organization's rationale in embarking upon privatization.

1. Quality. Service quality will improve (15), remain unchanged (5) or decrease (-15) through privatization.

2. Standards. The service under consideration currently meets (5), or does not meet (-5) existing departmental standards. In the absence of standards, the following criteria should be assessed: standards are being (5), can be (3) or cannot be (-5) developed for monitoring service quality.

3. Supplementary Support. Privatization will increase (5), have no effect (2), or decrease (-5) the availability of supplementary support (volunteers, grants, revenue).

4. Manpower Intensive. The manpower costs (salary and benefits) of this service are 80 per cent or more (5), between 79 and 50 per cent (3), or less than 50 per cent (1) of the operation's total cost.

5. Accessibility. The accessibility of service will improve (10), not be affected (5), or deteriorate (-5).

6. Existing Vendors. There are multiple (10), only one (5), or no (-10) vendors within the geographic area served who will bid on a tender to privatize this service.

7. Staff Transfer. All (5), or some (3), departmental staff currently performing this service will be hired by the proposed service operator.

8. Cost Savings. Privatization of the service will yield a cost savings over administrative costs greater than 10 per cent (10), between 10 per cent and no savings (5), an increase of up to 10 per cent (-5), or an increase greater than 10 per cent (-10).

9. Expenditure Control. Privatization of this service will enhance control over operational expenditures (10), have no impact on control over operational expenditures (5), or substantially reduce control over operational expenditures (- 10).

10. Automation. Automation of this service is not feasible (10), feasible but with little cost savings (5), feasible with considerable cost savings (- 5), or underway (- 10).

11. Demand. Service demand for this service is stable (5), rising (1), or dropping (- 5).

12. Other. There are ten discretionary points which can be assigned (10), or subtracted (- 10) to reflect factors which would contribute (+) or detract (-) from the "privatize-ability" of this service. These would include, for example, known public, political, or union acceptance/resistance; recent public service involvement in the delivery of this service; etc.

The Stages of Privatization

The privatization of a service typically proceeds through several stages. The first stage is conceptual and constitutes a "notice of intent." During this stage, the organization comes to understand its "business" and assesses its current operation, defining privatization, and assessing the feasibility of divestiture.

The second stage or evaluation is the stage during which an organization measures the value of its current service and assesses the costs and benefits of its privatization. This stage concludes with the granting of "approval-in-principle" for which a consultation or communications plan is warranted.

"Operational approval" is granted upon the successful completion of the consultation or communication with various interest groups, the securing of necessary resources, and the submission of an approved strategic plan.

Implementation constitutes the actual transfer of responsibility for service administration. Implementation is the most complex stage of privatization as it involves the actual "disassociation" or "disassembly" of an existing operation. Only the most senior departmental authority would be responsible for providing "approval-in-principle" and "operational approval" for any privatization initiative.

CONCLUSION

The government remains committed to a quality "safety-net" of health and welfare services. The divestiture of direct service responsibility to the non-public sector through the revitalization of community enterprise must be carefully nurtured and thoroughly explained. The success of this venture will depend upon the vision of the department's employees and the public's continuing commitment to high-quality, but effective, social services.

NOTES

1. Subsequently revised. Unpublished article, Kinkaide, P. "The Server or Purchaser?" Decision: Selecting the Best-Value Supplier (April 1986).

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THREE

PRIVATIZATION OF SOCIAL SERVICES: POTENTIAL IMPLICATIONS AND CONSEQUENCES¹

A.N. Azim

The purpose of this chapter is to examine the extent of privatization of social services within the province of Alberta, and to speculate on the extent to which it may be extended as the government pursues its hold-the-line budget. To assess this situation, it is necessary first to understand the concept of privatization and its potential consequences on both the provision and delivery of social services. Part One of this chapter, therefore, will address these areas while Part Two will outline and extrapolate the current situation regarding the privatization of social services in Alberta.

PART ONE: THE CONCEPT OF PRIVATIZATION

The Canadian welfare system emerged as a consequence of the urbanization and industrialization of Canadian society in the 20th century, particularly after the rapid expansion of the social service network following the depression of the 1930s.

In keeping with its commitment to "full employment," the government has, since the Second World War, entered into a "social contract" with its citizens in which the "state agreed to sustain an economic milieu conducive to full employment, as well as a social security system that would ensure workers against major risks associated with industrial life" (Patterson 1983, 9). Business and industry supported the social security system in principle because it promised a healthy and more productive labour force and because they felt it would act as an economic stabilizer by sustaining consumer demand during economic downturns. In keeping with

these aims, social services once provided piecemeal and sporadically by local charitable agencies became the responsibility of increasingly higher levels of authority: first municipalities, later the provinces and the federal government. In turn, this expansion and centralization of social services — the evolution of the modern welfare state — was accompanied by growing levels of government funding and priority, from a negligible portion of government expenditure in 1867 to well over one quarter of expenditures 100 years later.

As Faid (ESPC 1984, 2) points out, the social contract seems to be up for renegotiation or redefinition. In particular, the historical trend towards centrally formulated, administered and delivered social services has been increasingly challenged by the concept of privatization.

Definition of the Concept of Privatization

Advocates of privatization seek to reverse the evolution of social service delivery by shifting responsibility for service delivery from the public to the private sector.

According to Stoez (1981, 399) privatization is the "systematic turning over of welfare services to the private sector, a strategy that involves altering the power relations of structural interest groups within social welfare." Two major considerations have led to the advocacy of social service privatization: a perceived need to "restrain" government social welfare expenditures; and the acceptance by some governments of a neo-conservative ideology.

Privatization and Restraint

The first argument for privatization — that of "restraint" — is essentially economic and administrative in nature. Canada, like other Western nations, is experiencing a period of economic tribulation. Coupled with the growth of social service demands, economic trouble has placed a severe strain on government budgets, forcing governments to find more cost-effective mechanisms of social service delivery. Government-run services are believed by many to be wasteful, inefficient, excessively bureaucratic, and over-regulatory. By contrast, the private sector is thought to provide a more efficient means of social service delivery. Moreover, social problems represent a new potential market for the private sector, and hence a new tool of economic management. Hence, calls for "restraint" are often accompanied by calls for "privatization."

Indeed, this rationale underlies much of the privatization recently instituted in British Columbia, where severe social service cutbacks in the name of restraint have been accompanied by a growth in purchase of service contracts (POSC) from the private sector (Ismael 1984, 4-5). The recent economic statement by federal Finance Minister Michael Wilson, which emphasized a need for government to "tighten its belt and put its own house in order," while simultaneously stimulating the private sector, also reflects this line of thinking.

As long ago as October 1980, the Honourable A.J. MacEachen announced, in the federal budget address, the government's intention to achieve net savings in the social affairs envelope to finance initiatives in other envelopes. In part, savings were expected to be made through the reduction of transfer payments to the

provinces for those areas under provincial jurisdiction (Hill and Norquay 1984, 9). Patterson (1983, 9) has documented a decrease since 1975 in the federal share of transfer payments which fund five major social service programmes across the country. The 1975 federal share was 48 per cent; by 1981, this had decreased to 41 per cent, and is projected to decrease to 38 per cent by 1987. If cutbacks in government spending on social service programmes are an invitation to the private sector to enter the delivery business, the federal government extended that invitation quite some time ago.

Privatization and Neo-conservatism

A second, related impetus for the privatization of social service delivery is the rise of neo-conservative ideology. Neo-conservatives believe that free markets are an integral and necessary feature of free societies (Butcher 1984). State welfare systems, however, distort the free market and stimulate the growth of "big government," thereby threatening the economic and political liberty of both private sector entrepreneurs and society as a whole. Neo-conservatives also attack the state delivery of social services for its perceived inferior distribution of resources. It is a central tenet of neo-conservatism that a market mechanism in which rational consumers pursue their own self-interest maximizes the collective utility of resource distribution. This applies as much to the "market" for social services as it does to the market for other goods and services.

The neo-conservative view of privatization is summed up by Stoez, (1981) who identifies the changes that will occur in the social service network as privatization replaces the present system. He suggests that the anticipated changes in the social welfare system will be redefined in terms of the principle of market rationality and that service will be supplied in relation to consumer demand rather than bureaucratic decrees. He also claims that administrative overhead will be reduced and that programme accessibility will be improved because programmes will be more responsive to consumers. Service providers will be encouraged to locate close to their clients, and will be discouraged from maintaining long waiting lists. As well, more effort will be taken to create a congenial atmosphere within which to provide care.

The Consequence of Privatization

Before it is possible to identify the consequences of privatization on social services, it is necessary to understand both the characteristics underlying the present social service network and how the "privatization" of that network must be carried out.

The central tenet of our current social service network is that services should be universal: accessible to all persons in a consistent and equitable manner. To maintain consistent and equitable availability of services, a minimum acceptable standard of both provision and delivery must be set. This requires the existence of an adequate delivery system to ensure accessibility to the services. It also requires performance standards by which service delivery can be measured and according to which a minimal acceptable level can be maintained. Staff must be adequately trained to provide services at an acceptable level. As well, these services must be available at a cost that does not limit their access by low-income members of society.

Finally, public involvement in social services is needed if the level of their provision is to adequately reflect the social needs of individuals and of the community. It must be recognized that these needs will change as society itself changes over time.

MacDonald (1984, 9-10) identifies three levels of privatization within the social service network. Each of these would allocate varying degrees of responsibility for the provision and delivery of services to either the public sector (government) or the private sector (voluntary or non-profit agencies and for-profit or proprietary organizations).

The first, and perhaps the most extreme of these levels, would see the public sector divest itself of all responsibility for either the provision or the delivery of social services. Not only would it no longer provide any social services, it would also withdraw all funding from the private sector.

The second level of privatization would see the public sector responsible only for the provision and delivery of statutory social services: services whose existence, and the government's responsibility to provide them, is currently written into federal or provincial statutes. Responsibility for both the provision and delivery of all other social services would become the responsibility of the private sector.

In the third level, the public sector would retain much of the responsibility for provision of social service programmes currently in effect, but the responsibility for delivery of these services would be transferred to the private sector.

An obvious variation on the third level of privatization would see the responsibility for provision of many, but not all, of the present social service programmes remain with the public sector, but responsibility for their delivery would be optional. In other words, if the government undertook the responsibility for providing a programme, it could be totally or partially delivered by either the public or private sector.

One method at this level that has already generated considerable attention is the purchase of services by the government from the private sector. Such contracts have already been implemented in a number of instances. MacDonald (1984, 13-15) has identified three types of service contracts which can be entered into between the public and private sectors, as follows:

- a) Contracts with individual service providers, such as those used for foster homes and group house parents;
- b) Contracts with a non-profit agency which either employs its own staff or arranges with another private agency or organization to fulfill the contract; and
- c) Contracts with proprietary organizations. These are similar to contracts with non-profit agencies except that the primary objective is to earn profit for the owners of the organization.

Another more extreme method of implementation at this level of privatization is discussed by Schlenker (1974, 348) and Dorsey (in ESPC 1984, 7). Dispensing funds directly to social service recipients in the form of vouchers would allow them to "shop" for their required services in much the same manner one would "shop" for the services of a doctor. As Dorsey points out, this method would not always be feasible, especially when the service recipient is a child.

Thus, the privatization of social services will result in two types of changes in the present structure of the social service network. Either services will be provided by the public sector and delivered by the private sector, or they will be both provided and delivered by the private sector. It must be remembered that there are two segments to the private sector: non-profit and for-profit. Depending upon which one of these two segments is involved, privatization will result in different consequences.

***Public Sector Responsibility for Provision of Services —
Non-Profit Private Sector Responsibility for Delivery***

If responsibility for provision of social services continues to lie with the public sector, but responsibility for delivery is transferred to the non-profit private sector, the government will still generally be in charge of the purse-strings. Funding will be supplemented by the philanthropic dollar in voluntary agencies, but individual service providers will have to rely solely on governmental funding. The government will be in a position to define a minimum level of acceptability and to define and enforce performance standards against which service delivery can be measured and monitored. As well, because the government is dealing with non-profit agencies, it will be able to strongly influence the price for these services to the public. Finally, it is public money that is financing the provision and delivery of services. The opportunity for public input and involvement in defining social services and acceptable minimum standards of delivery and provision should not differ from the present.

On the negative side, however, considerable concern has already been raised regarding the quality of care received when services offered in foster homes and group homes are purchased through POSC's (Purchase of Service Contracts). Faïd (ESPC 1984, 4) expresses concern that the level of financial assistance which contracts provide does not meet the costs of caring for the child involved. As well, he feels that cuts in government funding could result in less stringent screening of potential homes and in reduced supervision and training for group and foster parents. MacDonald (1984, 16) finds that contracts with individual service providers must be closely monitored by social workers. He feels the monitoring ability will be undermined as cuts in government spending decrease staff availability.

Wedel (1976, 103) points out that monitoring and regulation of service delivery is both necessary and desirable "to ensure taxpayers that the terms of the contract are being carried out and to show that the contracting agency is capable of participating in the social services market on a sound and defensible basis."

Government funding, while constituting the lifeline of many of the non-profit agencies, is not reliable from year to year. MacDonald (1984) notes, in the case of B.C., that contracts remain in effect only during the period covered by the fiscal year and that they may be terminated without cause by either party. Wedel (1984, 102) however, sees this as a positive point. POSC's afford a way that a cooperative effort can be made by the public and for-profit private sectors on a business-like basis. If the working relationship becomes unfavourable, agency and personal values will not be damaged if the contract is changed or ended.

A reduction in government funding could change the scope of these agencies' services as they more closely align their activities to those for which the government is willing to dispense funds. Political patronage is likely to play an increasingly common role in the dispersal of funds.

***Public Sector Responsibility for Provision of Services —
For-Profit Private Sector Responsibility for Delivery***

MacDonald (1984, 20) recognizes that safeguards do exist in the public and non-profit private sectors to ensure that client well-being continues to be of primary importance. In the for-profit private sector, however, the profit motive presents a basic conflict of interest in achieving this objective.

This conflict affects the concepts of accessibility, equity, and universality. If responsibility for delivery of social services is to be transferred to the for-profit private sector, these organizations will insist on making a profit; otherwise, the market will appear unattractive to them. Such profits may be maximized by minimizing costs and maximizing revenue. Yet a minimum level of quality for service requires enough adequately-trained staff at a sufficient number of locations to dispense services at reasonable prices so that both those who need and want the services can get them.

Although these organizations may provide more efficient service, because of the dictates of a competitive market, they will not be able to reduce operational costs appreciably because of the labour-intensive nature of social service delivery. MacDonald (1984, 20) feels that the most likely way for them to increase profits is to decrease staff complement, staff salaries, or both. He cautions that this could result in the hiring of only minimally qualified staff. Alternatively, profits could be raised if the number of locations in which services are available was reduced, or prices were increased. Either step would violate the principle of universality, reduce the quality of social services, or both.

Ultimately, while the public's ability to influence government policy decisions concerning the composition of social services would not change, the voices of the most frequent users of these services would likely carry the most weight. In this scenario, these would be the voices of the more affluent in society, rather than the most needy.

Private Sector Responsibility for Both Provision and Delivery of Services

In a truly "privatized" social service system, the for-profit private sector would both provide and deliver social services in response to free-market consumer demands.

Although he does so sarcastically, Faid (ESPC 1984, 3) suggests that this means that "in the true spirit of privatization, the assumption is that if the voluntary sector or a for-profit company is not prepared to pick up the costs of that service, then it is adequate proof that the service wasn't really required in the first place." Alternatively, the non-profit private sector (or the public sector) could step in to provide social services deemed uneconomic by the for-profit private sector. This introduces a duality of service provision, that is, the delivery of the same service at two different

levels: the for-profit private sector would aim their distribution at those who could afford to pay, and the non-profit private sector would provide services for the remaining population.

Stoez (1981, 40) describes this neo-conservative idea. He states that privatization would be accompanied by government subsidies to provide services for the needy and to augment the funding of the non-profit private sector. He describes this process as "the abandonment of a residual conception of social welfare, which sees the market and the family — and perhaps the church and voluntary groups — as the first line sources of help, with the government only acting to help the few who fall through the network." Therefore, the welfare state would not be totally dismantled, but it would be significantly altered to provide only for those unable to provide for themselves. The existing tendency in the welfare state for social programmes to cover increasingly larger portions of the population would be halted. "Government will divest itself of responsibility for the non-poor, preferring that this more affluent part of the population purchase services in the marketplace" (Stoez 1981, 405).

Morris (1982, 342) presents a similar point of view. Assuming that human needs will not be neglected and that private philanthropy will continue, he sees two avenues for effective service distribution. One is the transfer of some programmes to the non-profit private sector which will "involve an increase in the readiness of individual citizens or corporations to increase vastly their contributions to the non-profit philanthropic organizations to pick up part of the burden being handed off" The second avenue involves the expansion of the role of the for-profit sector. He notes that "this alternative will reach at least one-half of the population and, at worst, it will be the half with fewer social needs than families of limited income."

More critically, Stoez (1981, 407-408) recognizes that "creaming" is one of the serious drawbacks to privatization. "Creaming" is the practice whereby for-profit private sector agencies provide services to low-risk, high-profit clients and refer low-profit, high-risk clients to public agencies. These agencies would therefore become "repositories for the permanent welfare cases."

A two-tiered system of social welfare wherein the "rich" and "poor" have access to social services of different composition and quality has not received sufficient criticism in the literature. Many of those who have discussed a two-tiered system view it as a giant step backward in time, fueled by the re-introduction of charity into society. Tobin (in Butcher 1984, 52), for example, recalls the Victorian Poor Laws and the workhouse in Dickens' time. Another speaker at the conference on "Privatization and the Public Trust" felt that when non-profit agencies were used in this fashion, there was a risk of the "pray before you eat" approach, which would "force people to depend on charity and thereby further undermine their basic dignity" (CCSD 1984, 5). Tobin (in Butcher 1984) feels that the neo-conservatives, through this approach to provision and delivery of social services, "attack the provisions for those in need, rather than the causes of need itself." Dorsey (in ESPC 1984, 7) feels that this approach reflects a government that puts more value on the needs of the rich than on those of the poor.

The Impact of Privatization on Voluntarism

Voluntary agencies have been described by Langton (1981, 12) as "important laboratories of innovation in social services." He feels they serve as models of how organizations can overcome or reduce the "depersonalization, bureaucratization, and sterile professionalism that we have come to associate with the government and corporate sectors." Stoez (1981, 403) feels that they offer the "advantage of neighborliness, a re-affirmation of community values, a concern for community welfare as opposed to personal gains, and freedom to alter programming so as to conform to changes in local priorities." As an integral component of the social service network in Canada, voluntary agencies compose the bulk of the non-profit private sector and will be significantly affected by any form of privatization.

The present role of these agencies is twofold. Not only do they play a necessary part in the delivery of social services, they also act as vocal advocates who influence government social policy. They play a significant role in defining the composition of the social services package and of the minimum acceptable level of service quality and accessibility. MacDonald (1984, 17) underlines the importance of this dual role. "In today's world, non-profit social service societies must give balanced attention to both the collective interest and the individual needs of their client constituencies."

MacDonald (1984, 17) indicates that "enhanced government contracting in the delivery of social services could cause many societies to reorient their services from areas of self-help and collective advocacy for their client constituencies to discrete individual service provision." He sees a resulting reduction in "public awareness of underlying social problems and public commitment to changing harmful environments." Faid (in ESPC 1984, 3) emphasizes their delivery role. Like MacDonald, he feels that government contracts will encourage an agency to ignore the real service needs of a community and to concentrate instead on those where government contracting is available.

Wedel (1976, 104) again cautions voluntary agencies against entering into contractual work where performance criteria are part of the contract. In any area where the expectations of the agency cannot be clearly spelled out nor the performance criteria agreed upon, he feels that performance contracting will lead to a narrowed scope of the services provided. Agencies will tend to avoid high risk areas and to concentrate on areas where there is little difficulty meeting the criteria.

Increased government contracting of services is almost inevitable if the public sector relinquishes its responsibility for delivery of services while maintaining its responsibility for their provision. If these services are not seen as profitable by the for-profit private sector, the burden will fall on the non-profit sector to "pick up the slack" in service delivery.

Faid (in ESPC 1984, 3) notes, however, that neo-conservatives see the increased role of voluntary agencies as "a bulwark against the bureaucratization, professionalism, and paternalization of government operated services, and a means for encouraging greater participation from citizens and clients." He goes on to argue against this viewpoint, that voluntary agencies are inherently narrow in scope and

exclusionary in their interests. They can become "just as institutionalized, rigid, inaccessible, unresponsive, and undemocratic as government bureaucracies."

Morris (1982, 339) echoes this concern. He points out:

... crowning achievements of private philanthropy have been in small dedicated organizations with much flexibility and imagination. There is no evidence that these small private organizations, if they convert to mass service organizations will be more humane, more effective, less regulation ridden, than the large public bureaucracies that are so vigorously criticized.

Wedel (1976, 103) recognizes that an agency must be able to deal with bargaining or negotiating and with contract management when obtaining funding through POSC's. He notes that to provide this capacity, important adjustments to the organizational structure of the agencies are often required.

Although the effectiveness of a voluntary agency's advocacy role is seen as impaired by a dependence upon government funds, the importance of adequate funding to their service delivery role cannot be overestimated. Morris (1982, 340) points out that social service programmes run by small voluntary agencies are often more expensive per case than are similar programmes administered by large scale public organizations. He speculates that this difference is due "either to low volume, meaning a higher unit cost, or just to the price of organized flexibility which is inevitably higher than the price of routinized programmes."

While the government now acts as a very important revenue source for many of these agencies, funding levels cannot be consistently relied upon from year to year. Any reduction in government funding must be replaced with funds from another source if the agency is to continue its work at a comparable level, let alone expand. The only other sources of funds for most agencies are philanthropy and client and user fees. Patterson (1983, 12) notes that dependence on user fees lessens an agency's ability to adequately serve its lower income clientele.

Patterson (1983, 12) conducted a follow-up survey of voluntary agencies in the Toronto area, to identify the impact of cutbacks in government funding on their level of service. He found that government programmes provided by the voluntary sector had been eliminated or cut. As well, agencies had increased staff loads and restrained staff wages. He felt that many results had not yet become apparent because some agencies had gone into debt to absorb these funding cuts.

Referring to the B.C. situation, MacDonald (1984, 11) notes that some public sector services mandated by legislation had been abandoned with no commitment or planning for their replacement. The government appeared to assume that in "some undefined manner, voluntary agencies or citizens' volunteer groups will fill the gap." He feels this is unlikely to happen, since there is no legal mandate for them to do so. As well, the performance of the voluntary sector has been curtailed by cutbacks in government funding.

In an empirical study addressing both the for-profit and non-profit private sectors, Sosin (1984) was unable to identify any statistically significant relationship between public welfare expenditures and the extensiveness of private social service delivery.

Rather, he found that a more extensive private network of services exists when there is a more extensive public network and where there is a higher degree of urbanization and a lower percentage of low-income residents in the population. *Apparently, the extensiveness of the private network relates more to the existing resources available than to the need for services.* This conclusion does not support the notion that private agencies fill the gap when the plug is pulled by government. Sosin found that the extent to which private agencies pick up the slack is quite limited. They do so almost exclusively in agencies providing emergency services.

In summary, then, it is apparent that the existing social service network will change if the provision or delivery of social services is systematically turned over to the private sector. The most probable result will be the demise of the welfare state. Considerable concern focuses on the continuation of the central tenet of the present social service network. Its existence seems much more secure if the public sector retains responsibility for the provision of social services and does not entirely relinquish responsibility for their delivery to the private sector.

The situation in Alberta illustrates the dangers that result when a provincial government takes measures to reduce expenditures in the area of social services.

PART TWO: THE ALBERTA SITUATION

Over the past two years, British Columbia, like Alberta, has been attempting to deal with the current Canadian economic downturn. Recent government actions in B.C. have placed responsibility for provision and delivery of many social programmes in the hands of the private sector. This devolution is a result of deliberate government actions to involve the private sector in this area, and of concurrent funding cutbacks to programmes offered by the Ministry of Human Resources.

Concern has been raised within Alberta that the government will use B.C. as a model as it implements policies promoting economic resurgence and private sector job stability and training. The purpose of Part Two of this paper is to examine the extent to which privatization has already occurred within this province, and to speculate on how far it will extend as the government continues to hold the line on budgets.

The Current Situation (the 1984-85 budget)

Public services in Alberta are provided, and to a large extent, delivered by the Department of Social Services and Community Health. This department is responsible for the management of programmes and institutions to promote the physical, mental and social well-being of Albertans (Alberta 1983b, 295). From 1982 onward, this department has been under the management of the Honourable P. Neil Webber. The services provided through it are divided into eleven programmes or support services detailed in Appendix 1, along with the proportion of total estimated expenditures allocated to each programme for the 1984-85 fiscal year.

The 1982-83 funding for the total range of social services provided by the department exceeded the \$1 billion mark for the first time — an increase of 22 per cent

over comparable 1981-82 estimates. In 1983, the Honourable Lou Hyndman emphasized the level of services that Albertans receive.

The province's very large expenditure base grows significantly in dollar terms every year just to maintain current standards of health, education, social and other services. In 1983-84 the increase in spending just to maintain these current programs is \$678 million, about \$286 for each Albertan Alberta's expenditure per person is more than 30 per cent above the national average. (Alberta 1983a, 15).

He foreshadowed reductions in spending on services: "it is doubtful whether that high a percentage above the national average can be maintained" (Alberta 1983a). However, he indicated that reductions would be accommodated largely by the control of the public service. "If public sector settlements are reasonable, then a 'hold-the-line' budget will be possible without the need for a reduction in education, health, and social services" (Alberta 1983a). The hold-the-line budget included a cut of 155 permanent, full-time positions in the Department of Social Services and Community Health. This was a reduction of slightly more than two per cent of the total personnel authorization of the department.

In the 1984 budget address, Mr. Hyndman again emphasized the government's strong commitment to maintaining these services.

Essential services for health, education, child welfare, our seniors, and the disadvantaged will not be sacrificed. There are no funding cuts in these areas. Albertans of all circumstances will continue to receive the highest level of public service of any Canadian citizens. (Alberta 1984, 17).

A further reduction of 162 permanent full-time positions was anticipated, accounting for a slightly more than two per cent reduction in the 1983 personnel of the department. Moreover, in 1984-85, the budget estimates for the department represented little more than a one per cent increase over the 1983-84 estimates. Realistically, this small increase was insufficient to keep pace with inflation; a net reduction in funding occurred.

It is readily apparent that manpower and real funds have been significantly reduced over the last two years. If this reduction is not to have a negative impact on services, how can the social service network absorb these cuts? For the first time, privatization was identified in the 1984 budget speech. Mr. Hyndman indicated that the "public sector must also shoulder the burden of restraint now that the boom has subsided" Over the coming fiscal year, he said he would look for further reductions "in the size of the public service."

The government claims that reductions will depend on government priorities, demand for services, fairness, efficiency, and the extent of privatization. The rationalization for privatization then becomes explicit: "government should not be doing work that could be handled more efficiently by the private sector" (Alberta 1984, 16). Speaking about the privatization of specific services, Hyndman claims that the government will "proceed with care to ensure that the quality of public services is not jeopardized" (Alberta 1984).

Is that, in fact, what has occurred? In B.C., criticism was levelled at the government because its actions cutting the size of the public service and related social programmes, were seemingly carried out with little forethought or planning (CCSD 1984, in particular p. 53). In Alberta, officials of the Department of Social Services and Community Health claim that Alberta has not yet really begun to privatize the provision and delivery of social services. Only about 25 per cent of department services are currently delivered by the private sector, and the for-profit private sector is involved only in the field of child welfare. The POSC's used in this programme account for less than ten per cent of the total budget. However, some social services, such as private nursing homes, are provided by the private sector. These facilities give the service recipient a choice between the government services and the for-profit private sector services.

To indicate the scope of the non-profit private sector in Alberta, a 1983 study by Robichaud and Gaudet (1983) compares provincial policies and practices relating to voluntary agencies and presents a good summary of the extent of voluntarism in the province. *It finds that volunteers are involved in the delivery of services offered by five out of the eleven programmes administered by the department.* The introduction to the study commissioned by the Department of Social Services and Community Health notes that:

The Alberta Department of Social Services and Community Health is systematically reassessing its approach to the voluntary sector and its support of voluntarism. This reassessment constitutes an attempt to identify opportunities and mechanisms which would better support the development of voluntary action. (Robichaud and Gaudet 1983, 1)

As well, the study commends the government's present attitude toward voluntarism.

There is a real preoccupation and firm desire expressed in various ways to develop community life and the significant involvement of volunteers wherever possible. The Family and Community Support Services Act is particularly impressive and interesting with its preventative aspects and the commitments it makes to citizens' volunteer participation. Furthermore, considerable effort in the various administrative units are deployed to disseminate simple and accessible information to the Department's varied publics. (Robichaud and Gaudet 1983, 23)

The services delivered by volunteers are an integral part of the provincial social service network. Agencies involved in provincial programmes generally receive operating grants from the government. Dorsey (in EPSC 1984, 3) notes, however, *that the voluntary sector in Alberta receives the smallest percentage of its revenue from government grants of any of the provinces in the country.* Grants compose only about 11 per cent of these organizations' revenue; the largest share of revenue comes from philanthropic donations.

There are approximately 3800 charitable organizations registered in Alberta, employing about 11,500 people (ESPC 1984, 8). Statistics for 1979-80 show that approximately 19 per cent of the working age population of Alberta was involved

in voluntary activities; by comparison, the Canadian average was 15 per cent. Of these volunteers, about 85,000 or 29 per cent were involved in the delivery of social services (Robichaud and Gaudet, 7).

The Distribution of the Cutbacks

Financial information on the Department of Social Services and Community Health since 1982 is presented in a way that does not facilitate annual comparison of the funding distribution among programmes. Each year, the financial figures of the previous years are adjusted to account for any internal redistribution of spending or of responsibilities among programmes. More specifically, if such changes occurred within the Child Welfare Services programme in the 1983-84 year, for example, expenditure estimates made before the beginning of the 1983-84 year would be adjusted to reflect these changes before being presented for comparison with the spending estimates prepared for the 1984-85 year. While these adjustments facilitate the decisions made by cabinet ministers when voting on the 1984-85 budget, they do not make it readily apparent where cuts have occurred in particular social programmes.

As well, the timing of distribution of these financial figures makes it difficult to determine exactly how the scope of each programme has changed from one year to the next. Actual expenditure figures for each programme are available for the 1982-83 fiscal year, but they will not be available for the 1983-84 fiscal year until the end of December, 1984. Again, these actual expenditure figures are adjusted each year as described above. However, Appendix 2 does present percentage changes between comparable estimates of expenditure for the 1983-84 and 1984-85 fiscal years. Also included are the comparable percentage changes between the estimates of expenditure for 1983-84 and actual expenditures of the 1982-83 fiscal year.

It should be remembered that the figures represent the estimates made at the beginning of the budget year, not the actual amount expended on the programme. These estimates are not used when preparing the estimates required to provide a similar level of service in the next fiscal year. Rather, forecasts of the actual expenditures during the current year are used, and the estimates for the next year therefore account for any inaccurate estimates of the current year.

It is noted, in Appendix 2, that there are several large decreases in estimates for programmes in the 1984-85 fiscal year because they are being compared with the inaccurate expenditure estimates for the 1983-84 fiscal year. The Department of Social Services and Community Health indicated that the estimates for the Social Allowance Programme illustrate such a situation. Expenditure estimates for 1983-84 exceeded the amount actually spent during that year, and there subsequently appears to be a large reduction in service slated for the 1984-85 year. *This, in fact, is not the case, for a service level, similar to that actually provided in 1983-84, was anticipated at the time the expenditure estimates for 1984-85 were prepared.*

In the Social Allowance Programme, there has been little increase in spending by the department for several years. Rather, there has been reorganization within the department, replacing the previous "programme orientation" of the services

offered by the department with a "regional orientation." This reorganization was undertaken to allow service delivery to respond to the needs of each region, rather than treating the province as a single entity. To some extent, this change could account for the inability to compare financial data from one budget year to the next.

A more detailed analysis of expenditure estimates is found in the Estimates of Expenditure 1984-85, Supplementary Information Element Details. Bearing in mind the qualifying statements on the applicability of this financial data, the estimates for the 1984-85 fiscal year indicate significant decreases in some of the sub-programmes administered by the department. Under the Social Allowance Program, payments to municipalities for both Programme Development and Support and Social Allowance for Employables have decreased from the comparable 1983-84 estimates by 100 per cent. The Programme Development and Support sub-programme allows for the design of the programme and the maintenance of the end product.

Another sub-programme deleted is the Supplementary Allowance to Old Age Security under the Benefits and Income Support Programme. The grants to vocational rehabilitation agencies received a 51 per cent reduction, and funding for the Programme Development and Support of Extended Care Services Administration under the Treatment of Mental Illness Program was cut by 51 per cent. *Funding was also cut completely or very significantly to three treatment centers under the Alcoholism and Drug Abuse Programme.*

These cuts are offset to some extent by significant increases in other areas of the programme. A new facility was anticipated under the Child Welfare Services Programme and associated expenditure estimates were increased 206 per cent from comparable 1983-84 estimates. Funding for the Wetaskiwin Center, which provides residence and treatment services for the handicapped, was increased by 46 per cent. Most notable, funds allocated to POSC's under the Treatment of Mental Illness Programme were increased by 750 per cent. The Rehabilitative and Special Health Services sub-programme under the General Health Services Programme received a 50 per cent increase in funding. Finally, funding for the Policy and Planning of the Programme Support sub-programme under Alcoholism and Drug Abuse was increased by 45 per cent. Funding also increased substantially to three of the treatment centers under this programme.

Appendix 3 shows the distribution of estimates by object of expenditure. The overall budget for each programme comprises operating expenditures and capital expenditures. Capital expenditures cover the purchase of fixed assets which have been reduced since 1983-84 by a significant percentage in six out of the eleven programmes. Where increases are anticipated, only modest increases are shown in the 1984-85 estimates of expenditures.

The operating budget accounts for manpower, supplies and services, and grants. Manpower cost estimates have increased in all departments, despite the reductions in full-time staff positions discussed earlier and detailed in Appendix 4. This increase can be attributed to the 1982-83 two-year wage contract settlement with

the department's employees. These increases were first included in expenditure estimates for the 1983-84 fiscal year and carried over into the 1984-85 expenditure estimates.

Grants, on the other hand, have been decreased in seven of the eleven programmes, with increases estimated in Child Welfare Services, Services for the Handicapped, Community Social and Health Services, and Alcoholism and Drug Abuse. Robichaud and Gaudet (1983, 10) indicate that the word "grant" used in these financial documents covers all payments to individuals and private agencies. Therefore, it is difficult to tell whether these decreases result in reductions in funding to voluntary agencies. However, their report indicates that volunteers are active in all of these programmes except Alcoholism and Drug Abuse.

What Does the Future Hold?

While not giving an indication of the time it would take to accomplish its objective, the Department of Social Services and Community Health confirmed government intentions to introduce privatization into the delivery of social services. However, with regard to the provision of services, it was indicated that the social contract is secure — the intent is to provide the same level of public service with fewer public servants. Government officials claim they can alter government's role from the primary source of service delivery within the province, to an insurer of service provision to a prescribed standard. Their intent is to significantly increase the role of the private sector in service delivery.

The move towards privatization is claimed to be a response to demands from the electorate regarding the present rigid and over-bureaucratized delivery of social services. The government further puts forward the vague notion that Albertans are being denied an opportunity for personal development within the social service field.

Department officials agree there is a real fear that the advocacy role of these agencies may be reduced with an increase in POSC funding from the government. They raise the question of how much advocacy is really necessary for a given cause. It has been pointed out by Department officials that there are currently as many as 50 advocacy voices for the provision of mental health services within the province.

Concern has also been raised about the situation in B.C., where the recourses open to the service recipient were significantly reduced once service delivery had passed into the hands of the private sector. Social Services and Community Health feels, however, that avenues for recourse are available to the Alberta service recipient; one of these stems from the awareness that the public purse is paying for the provision and delivery of services. It is also felt that, if the government is no longer involved in the delivery of a service, the advocacy role played by MLAs for their constituents' concerns would increase significantly. Indeed, this is foreseen as one of the strongest avenues of appeal open to the service recipient. One might wonder, however, whether such a trend, rather than preserving the sanctity of social services, might render them a political football. A final thing to be noted about Alberta's social service privatization intentions is that, even in the case where the for-profit private sector is involved with the delivery of services, the profit portion

of cost will be built into the cost of purchase of the service. At present, there are no user fees for services delivered by the for-profit private sector. In this case, one might then wonder, why the move? Can "privatization" to a regulated, profit-controlled private sector offer any of the benefits stressed by neo-conservatives?

In summary, the government of Alberta seems to be currently redefining its social contract with its citizens, despite its claims that it does not intend to divest itself of any of its responsibility for the provision of social services. Through a process of service divestiture, it intends to significantly increase the role of the private sector in the delivery of services. At best, it will place itself in a "watchdog" role, regulating the delivery of services and hoping to ensure that a *minimum acceptable level of universality, equity, and accessibility is achieved.*

CONCLUSION

At the conference on Privatization and the Public Trust, Butcher (1984, 54) points out that "there is a need for planning if social services are to be administered in a different manner than they are now — the social network is far too complex a system for ad hoc change." However, even those now responsible for the delivery of services are not satisfied with the present concept of the welfare state. Faid (in ESPC 1984, 3) reports that they feel that "increasing expenditures on human services has failed to even lessen, let alone eliminate, the basic inequalities of society." He also reports that social workers are troubled by the apparent rigidity and inflexibility of bureaucratized human services.

There does seem to be a need for more flexibility in allocating responsibility for service delivery, as long as the level of service provision is guaranteed. This concern over flexibility seems to be promoted by the neo-conservative attitude of most present-day governments as they attempt to deal with the economic recession. A mixture of delivery by both the private and public sectors seems to be generally a foregone conclusion.

However, there remains a very real concern that privatization will substantially alter the present social contract between the government and its citizens. The main concern is centered on the responsibility for provision of social services — a concern that the government will abandon service provision with no forethought or planning for its replacement.

Thus far, as governments have been considering the increased involvement of the private sector in service delivery, a corresponding increase in voluntarism in Canada has been evident, as reported by Robichaud and Gaudet (1983, 10). This sector seems willing, to some degree, to expand its present role in this area. Robichaud and Gaudet (1983) caution governments, however, that "one of the major dangers threatening voluntarism is vague talk of support, without specific policies. If this happens, governments will try to shift part of their social responsibilities onto volunteers, without really giving them the resources required for such a transfer of responsibilities."

The government of Alberta should take heed of this warning, before it proceeds towards privatization. Members of the government suggest that they will maintain

their responsibility for the continued provision of social services at the level now enjoyed by residents of the province. However, partially in response to a dissatisfaction with a rigid, bureaucratized social service delivery system, claimed to permeate the electorate, and partially in response to a need to cut present social service expenditures, the government has decided to significantly increase the role played by both the non-profit and the for-profit private sector. Substantial guidance and support for these sectors is envisioned through POSC's and grants which will enable the government to maintain prescribed levels of service delivery. While it is relinquishing responsibility for delivery, one can hope that it will ensure that there is no adverse affect on the level of service provision within the province.

NOTES

1. The author acknowledges the substantive and constructive comments and criticism by Jacqueline S. Ismael of the Faculty of Social Welfare, The University of Calgary. Also, extensive assistance was provided by Ms Gail Sokolon (MBA student), during the preparation of the chapter. Any shortcomings or errors remain entirely the responsibility of the author.

APPENDIX 1

OBJECTIVES OF PROGRAMMES ADMINISTERED BY THE DEPARTMENT OF SOCIAL SERVICES AND COMMUNITY HEALTH

1.0 Departmental Support Services

Objective - no objective statement given.

1984-5 Expenditure Estimate - \$60,803,080

Percentage of Departmental Budget - 4.97

2.0 Social Allowance

Objective - to provide social aid to families and individuals in need.

1984-85 Expenditure Estimate - \$436,464,890

Percentage of Departmental Budget - 35.70

3.0 Child Welfare Services

Objective - to provide a suitable environment for children committed to the Crown either by the courts or by mutual agreement.

1984-85 Expenditure Estimate - \$138,969,101

Percentage of Departmental Budget - 11.37

4.0 Specialized Social Services

Objective - to provide care and accommodation for Special Adult Groups, and to ensure that persons responsible for maintenance of their spouse and/or dependents continue to do so if the ability exists.

1984-85 Expenditure Estimate - \$16,047,900

Percentage of Departmental Budget - 1.31

5.0 Benefits and Income Support

Objective - to assist senior citizens to maintain relative independence and to enjoy life with respect and dignity; to guarantee minimum allowance to severely handicapped Albertans.

1984-85 Expenditure Estimate - \$166,173,550

Percentage of Departmental Budget - 13.59

6.0 Vocational Rehabilitation Services

Objective - To enable vocationally disadvantaged, disabled, and handicapped persons to increase their independence through the development of vocational skills and provision of employment placement services for those who are in receipt of other Departmental services.

1984-85 Expenditure Estimate - \$18,922,110

Percentage of Departmental Budget - 1.55

7.0 Services for the Handicapped

Objective - to ensure the development and provision of care and rehabilitation services by the community or the government, which

enable handicapped persons to develop according to their potential, and where possible, to function in the community.

1984-85 Expenditure Estimate - \$114,664,740

Percentage of Department Budget - 9.38

8.0 Treatment of Mental Illness

Objective - to provide long stay psychiatric in-patient services and regional community mental health services to citizens of Alberta, made available as close to their natural communities as possible, consistent with quality care and optimum utilization and coordination of community resources.

1984-85 Expenditure Estimate - \$43,664,320

Percentage of Departmental Budget - 3.57

9.0 General Health Services

Objective - to promote good health practices in Alberta, to prevent or control communicable disease and to provide rehabilitative health services.

1984-85 Expenditure Estimate - \$54,748,100

Percentage of Departmental Budget - 4.48

10.0 Community Social and Health Services

Objective - to enhance the quality of community life by providing financial and other resource support directly or through local authorities for community social and health services.

1984-85 Expenditure Estimate - \$146,311,000

Percentage of Departmental Budget - 11.97

11.0 Alcoholism and Drug Abuse - Treatment and Education

Objective - to encourage the development of healthy attitudes and behaviours which preclude the abusive use of drugs

1984-85 Expenditure Estimate - \$25,769,190

Percentage of Departmental Budget - 2.11

Source: Estimates of Expenditure 1984-85, Government Estimates
Alberta Social Services and Community Health
Comparative Summary of Programme Expenditures

APPENDIX 2

COMPARATIVE SUMMARY OF PROGRAMME EXPENDITURE

Programme/Sub Programme	% change from comparable 1983-84 estimates	% change from comparable 1982-83 actuals
1.0 Departmental Support Services	5.9	9.1
1.1 Minister's Salary & Benefits	—	
1.2 Manpower Costs	12.8	
1.3 Supplies & Services	- 7.0	
1.4 Grants	- 21.1	
1.5 Purchase of Fixed Assets	—	
1.6 Financial Transactions	—	
2.0 Social Allowance	- 7.6	35.8
2.1 Programme Development & Support	- 15.8	
2.2 Regional Service Delivery	5.4	
2.3 Social Allowance for Aged	1.7	
2.4 Social Allowance for Single Parent Families	- 11.7	
2.5 Social Allowance for Physically Handicapped	- 8.6	
2.6 Social Allowance for Mentally Handicapped	- 5.1	
2.7 Social Allowance for Employables	- 5.8	
2.8 Social Allowance for Special Groups	12.0	
3.0 Child Welfare Services	5.4	10.0
3.1 Programme Development & Support	- 6.5	
3.2 Family Services	14.8	
3.3 Contracted Residences	- 0.4	
3.4 Residence & Treatment in Institutions	19.4	
4.0 Specialized Social Services	4.9	20.0
4.1 Guardianship of Dependent Adults	2.3	
4.2 Senior Citizens	6.8	
4.3 Family Relations Program	12.6	
4.4 Purchased Services & Agency Grants for Adults	1.7	
4.5 Residential Accommodation in Institutions & Hostels for Adults	3.8	

Programme/Sub Programme	% change from comparable 1983-84 estimates	% change from comparable 1982-83 actuals
5.0 Benefits & Income Support	-1.3	19.5
5.1 Regional Service Delivery	0.6	
5.2 Senior Citizens' Supplementary Benefits	-8.9	
5.3 Allowances & Benefits	0.5	
5.4 Day Care	15.6	
5.5 Widows' Supplementary Benefits	13.4	
6.0 Vocational Rehabilitation Services	-8.4	13.5
6.1 Programme Development & Support	33.1	
6.2 Regional Service Delivery	2.3	
6.3 Purchased Services & Agency Grants	-10.9	
7.0 Services for the Handicapped	8.4	7.7
7.1 Programme Development & Support	-6.9	
7.2 Regional Service Delivery	-4.1	
7.3 Purchased Services & Agency Grants	4.0	
7.4 Residence & Treatment in Institutions	11.1	
8.0 Treatment of Mental Illness	10.5	7.3
8.1 Programme Development & Support	-4.2	
8.2 Regional Service Delivery	15.8	
8.3 Purchased Service & Policy Grants	3.9	
8.4 Residence & Treatment in Institutions	12.3	
9.0 General Health Services	30.4	-3.4
9.1 Programme Development & Support	15.3	
9.2 Communicable Disease Control	9.5	
9.3 Funding of Provincial Health Laboratory	—	
9.4 Rehabilitative & Special Health Services	50.5	
9.5 Vital Statistics	9.7	
10.0 Community Social & Health Services	11.1	6.2
10.1 Programme Development & Support	-8.2	
10.2 Regional Service Delivery	1.1	
10.3 Community Health Services	9.0	
10.4 Funding of Community Social Services	0.4	
10.5 Funding of Local Health Services	14.4	
10.6 Day Care	13.1	

Programme/Sub Programme	% change from comparable 1983-84 estimates	% change from comparable 1982-83 actuals
11.0 Alcoholism & Drug Abuse - Treatment and Education	9.3	8.2
11.1 Programme Support	6.6	
11.2 Treatment & Rehabilitation Services	12.2	
11.3 Education & Information Services	7.9	
11.4 Direct Financial Assistance to Private Treatment Agencies	7.0	

Source: Estimates of Expenditure 1984-85, Government Estimates
 Alberta Social Services and Community Health
 Comparative Summary of Programme Expenditure

APPENDIX 3

SUMMARY OF EXPENDITURE ESTIMATES BY OBJECT OF EXPENDITURE

	Summary by Object of Expenditure % Change from 1983-84 Comparable Estimates			
	Manpower	Supplies/ Services	Grants	Purchase
1.0 Departmental Support Services	12.8	-7.0	-21.1	—
2.0 Social Allowance	5.5	-16.0	-8.0	—
3.0 Child Welfare Services	20.9	—	4.2	-41.7
4.0 Specialized Social Services	13.0	-5.5	-1.4	-15.2
5.0 Benefits & Income Support	2.5	-15.2	-1.3	-100.0
6.0 Vocational Rehabilitation Services	6.9	2.9	-10.9	—
7.0 Services for the Handicapped	12.0	2.5	5.1	-2.7
8.0 Treatment of Mental Illness	17.6	6.7	-4.4	2.0
9.0 General Health Services	16.1	-38.9	-55.8	8.4
10.0 Community Social & Health Services	13.0	-4.0	11.3	17.1
11.0 Alcoholism & Drug Abuse	14.6	3.1	7.0	-9.3

Source: Estimates of Expenditure 1984-85, Government Estimates
Alberta Social Services and Community Health
Comparative Summary of Programme Expenditure

APPENDIX 4

SUMMARY OF REDUCTIONS IN MANPOWER AUTHORIZATION
(% change from comparable 1983-84 estimates)

Programme	Manpower Authorization	Permanent Full-Time Positions
1.0 Departmental Support Service	3.8	-4.0
2.0 Social Allowance	-87.0	-6.0
3.0 Child Welfare Services	68.6	-12.0
4.0 Specialized Social Services	-11.0	-14.0
5.0 Benefits & Income Support	-10.5	2.0
6.0 Vocational Rehabilitation Services	-9.3	-9.0
7.0 Services for the Handicapped	-100.5	-99.0
8.0 Treatment of Mental Illness	-17.8	-16.0
9.0 General Health Services	—	-1.0
10.0 Community & Social Health Services	-3.0	-0.8
11.0 Alcoholism & Drug Abuse - Treatment & Education	6.3	-8.0

Source: Estimates of Expenditure 1984-85, Government Estimates
Alberta Social Services and Community Health
Comparative Summary of Programme Expenditure

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FOUR

PRIVATE ADOPTION IN ONTARIO¹

Evelyn Ferguson

During the last decade there has been a renewed interest in the delivery of social services by the private sector, on both a profit-making and non-profit basis (Social Planning Council of Metropolitan Toronto 1984; Gilbert 1983; Kamerman 1983; Hadley & Hatch 1981). In Ontario, Child Welfare services, historically funded by a partnership of the public and private voluntary sectors, has also been affected by this trend (Hurl 1983). One of the manifestations of privatization can be seen in adoption placement services, traditionally delivered in private Children's Aid Societies that are primarily publicly funded. During the 1970s, statistics revealed the growing use of a private adoption placement system funded by fees paid by adoptive parents (Segal 1982). In response to concerns raised in the mid-1970s in the United States (Meezan 1978), the Ontario government initiated legislative and regulatory changes to control and regulate this system (Ontario, "The Child Welfare Act," 1978).

It is the purpose of this chapter to examine the consequences of those statutory and regulatory changes on service delivery. The data for the chapter was collected by reviewing relevant documentation and by interviewing professionals in a range of positions affected by the legislation. The interviews were intended to:

- a) establish a picture of the range of perceived positive and negative consequences; and
- b) obtain recommendations for policy change.

The chapter has four sections. The first establishes the size and scope of the issue, and describes the legislative and regulatory changes in adoption legislation in the context of broader policies in Ontario. The second section of the chapter describes

the methodology of the exploratory research and introduces the theoretical framework used in the analysis of the findings. This analysis uses perspectives drawn from several sources. First, it draws from the growing body of literature on privatization as a phenomenon affecting social service delivery. This literature discusses both the advantages and disadvantages perceived as consequences of privatization (Terrell 1979; Kamerman 1983; Brilliant 1973; Fisk 1978; Ross 1982; Hurl 1983). Second, it will draw upon theoretical work postulating that policy formulation is a function of pressure from interest groups, particularly elite interest groups (Pross 1975; Presthus 1973; MacKenzie 1980; Morton 1980; Novick 1980). It is suggested that these two broad perspectives will highlight a variety of issues arising out of these legislative changes.

The third section of the chapter applies these two broad areas of theory to the consequences of the statutory and regulatory changes and the recommendations for change. These findings are based upon the review of the relevant documentation and the interviews with practitioners and interest group representatives.

The final section of the chapter discusses the problematic consequences and the recommendations for change in light of Bill 77, An Act Respecting the Protection and Well-being of Children and Their Families (Ontario 1984). It concludes with a discussion of the implications of this new legislation and the future of the private adoption system in Ontario.

THE ISSUE: SIZE, SCOPE AND LEGISLATIVE CHANGES

Adoption statistics in Ontario reveal an increasing use of the private adoption placement system for young infants. Segal (1982) notes that adoption statistics from 1972-1978 reveal that while C.A.S. adoption placements were halved during this time, private adoption placements nearly doubled. More recently, an Ontario Ministry adoption officer noted in 1983 that, while figures since 1978 were not available, in 1982 the Children's Aid Societies placed approximately 650 children and the private system placed approximately 350 infants (O'Brien 1983). This proportion is particularly significant because the private system almost exclusively places healthy Caucasian infants who are relinquished voluntarily by their parents. Consequently, a substantial proportion of these infants are being placed by the private system.

Because of the scarcity of healthy infants, concern was raised in both the U.S. and Canada about the lack of legislation and regulation in the private adoption market. In 1975, a U.S. Senate subcommittee commissioned hearings to investigate the abuses associated with baby selling and the Child Welfare League of America funded a nationwide study of independent adoptions (Meezan 1978). Meezan (1978) noted that unregulated private adoption put the adoptive parents, the relinquishing parents, and the child, at risk. The concerns raised included: inadequate home studies of adoptive parents, poor legal protection for the child and adoptive parents, lack of good counselling for the natural mother prior to relinquishment, inattention to the rights of the putative fathers, biased or incomplete social history information, and potential high profits for third parties (Meezan 1978).

As a result of such concerns, legislation in the U.S. and Canada was enacted to outlaw or regulate private adoption. Segal (1982) notes that it has been outlawed in five states and regulation is under way in others. An Ontario Ministry Consultation Paper (Ontario Ministry of Community and Social Services 1982, 151) states that several Canadian provinces (re: Newfoundland and Quebec) have banned private adoptions, while New Brunswick has outlawed third party involvement. In a comparison of provincial legislation, Ferguson (1984) found that five provinces (Saskatchewan, Quebec, Newfoundland, Nova Scotia and New Brunswick) appear to have legislation prohibiting private adoption, two provinces (Ontario and Manitoba) have legislation controlling and regulating it, while the five other provinces and territories have weak legislation with few controls and small fines (Ferguson 1984).

As Segal (1982) describes, in Ontario before 1978, private adoption placements were made by individuals and subsequently registered at the Ministry of Community and Social Services. The local Children's Aid Society was then asked to do a home study and submit a report to the Director of Child Welfare recommending or not recommending the legal completion of the adoption. This system resulted in final adoptions in all but the most exceptional circumstances.

By the mid-1970s, cognizant of the problems in the U.S., Ontario became increasingly concerned by the potential problems inherent in this system. At the same time, social policy development in Ontario was dominated by initiatives to manage and restrain the increasing costs of services. Novick (1980) suggests that the introduction of "reprivatization," was one means to that end. Consequently, during the 1970s, the Ontario Ministry of Community and Social Services made a strong commitment towards service delivery guided by this philosophy. In her case study of Ontario's Children's Services System during this time, Hurl (1983) argues that this philosophy was revealed in a system operating largely on the basis of "contractual residualism." Such a system supports and purchases services through contracts with the non-governmental sector, and provides services directly to those in need, with a minimum of governmental intervention.

The Ontario Ministry's response to the potential problems with the private adoption system appear to be consistent with the reprivatization philosophy. The Child Welfare Act (1978) was amended to make changes regulating the private adoption market, giving the Ministry more control over the system and protecting the parties involved. Relevant sections are found in both the legislation and accompanying regulations. Section 67, subsection 1 (Ontario, Child Welfare Act 1978) prohibits payments for adoptions and subsection 2 excludes licensed agencies and individuals from this subsection. Sections 60-66 describe the establishment of a licensing system applicable to both individuals and agencies. Licenses are issued by the Director of Child Welfare before placement and after submission of an adoptive parent home study carried out by a professional social worker approved by the Ministry. Specific sections deal with issuing, renewal, grounds for refusal to issue or renew, appeal procedures, suspension, directions for a home study, and supervision. Section 65, part 1 prohibits any person but an adoption agency or licensee

from placing a child; and part 2 prohibits receiving a child without prior approval of the Director. Section 94 establishes a fine of \$2,000 for contravening sections 65 or 67.

Regulation 388/79 under the Child Welfare Act, 1978, Part VII Adoption, establishes further controls limiting the number of licenses issued to any person to two licenses in a twelve-month period; establishing standards and deadlines for submission of social histories of the biological parents and home studies of the adoptive parents; establishing a maximum fee chargeable by the licensee (\$1500) and giving the Director the right to approve an amount in excess of that amount; and establishing an appeal procedure for adoptive parents to request a review of charges.

Thus, the established machinery provided a closely regulated private adoption system that could control an already growing private adoption market in Ontario. At the same time, the legislation supported the further development of this system to deliver adoption services. This development would transfer the cost burden of the service from the publicly-funded Children's Aid Societies to adoptive parents, a group beyond the need of financial help. This adoption placement system was therefore consistent with the broader policy objectives of "reprivatization," transferring the service to the private market and cutting back costs of service to the Ministry.

THE RESEARCH

The Theoretical Framework

This chapter uses theoretical perspectives from two broad areas of literature. First, it uses a growing body of literature that specifically examines the trend towards privatizing social service delivery. This material specifically focuses on voluntary services (Hadley & Hatch 1981), or profit services (Social Planning Council of Metropolitan Toronto 1984), as well as discussing the complex interactions between the voluntary, profit, and public sectors (Kamerman 1983; Hurl 1983; Brilliant 1973; Gilbert 1983; Fisk 1978).

Despite the diversity of perspectives, this material suggests that there are commonly accepted advantages and disadvantages of privatizing social service delivery. The arguments presented that suggest there are positive consequences of delivering services in the private sector share the assumption that services should be delivered in a residual system that minimizes service costs to the public sector. Such arguments make no pretense of enshrining equality of access or the equitable redistribution of social goods as goals of service delivery. This material (Terrell 1979; Kamerman 1983; Brilliant 1973; Fisk 1978; Hurl 1983) suggests that introducing the private market system will create greater diversity of services, resulting in a wider choice for users. Second, the introduction of a competitive system should result in greater efficiency, more innovation, and more responsiveness to client needs. Finally, a private system is said to provide a more cost-effective service because less cost is borne by government and high labour union wages can often be avoided.

Arguments in this literature citing problematic consequences of privatizing social service delivery tend to develop from two positions, one that espouses a universal system of service delivery, and another that supports a residual model. The former places priority in equality of access and the redistribution of scarce resources in an equitable manner. This position suggests that introducing a private market alternative results in a two-tiered system of service, one system serving the rich and the other serving the poor. This system concentrates control in the hands of upper income groups (Ross 1982), undercuts the quality of service to the public sector (Novick 1980; Hurl 1983; Kamerman 1983), and limits equality of access to the clients (S.P.C. of Metro Toronto 1984; Gilbert 1983; Novick 1980). Other arguments that accept the residual model raise problems related to the difficulties of consistent long-range planning (Hurl 1983; Kamerman 1983; Brilliant 1973) and accountability to government or the regulatory body (Kamerman 1983; S.P.C. of Metro Toronto 1984; Novick 1980). Concern is raised about the degree to which the regulated control their own regulation, and affect social policy to meet their own needs rather than the public good.

The second body of theoretical literature draws upon interest group theory, particularly elite interest group theory, to explain the process of social policy formulation. Pross (1975) suggests that interest groups operate as pressure groups: "organizations whose members act together to influence public policy in order to promote their common interests" (Pross 1975, 3). He further suggests that the Canadian political system tends to favour elite groups by using functional, accommodative, consensus-seeking techniques of political communication, rather than conflict-oriented techniques which arouse public opinion. Presthus (1973) describes the process of "elite accommodation" in Canadian politics and MacKenzie (1980), Morton (1980), Novick (1980) and Hurl (1983) apply these concepts to Ontario politics. This material suggests the existence of a powerful ruling elite in Ontario that shares common values and objectives and supports consistent positions on policy issues. This group tends to support a philosophy enshrining private property, minimal government intervention, the importance of freedom of choice, and the dominant role of the market place.

This literature suggests that there are a variety of consequences of policy making dominated by this ruling elite. Presthus (1973) suggests that elite accommodation results in a neglect of comprehensive, long-range social and economic planning; a reinforcement of the status quo; government support for the strong instead of the weak; and a tendency to define problems as essentially technical. Morton (1980) suggests that this process results in policies that are expedient, but not necessarily just. MacKenzie (1980) argues that this process fosters the development of a milieu of "corporatism": "a conception of society in which government delegates many of its functions to private groups, which in turn provide guidance regarding the social and economic legislation required in the modern nation state" (MacKenzie 1980, 337). In addition he suggests that corporatism results in a system where "there are ten times as many regulations made as there are pieces of legislation that become law" (MacKenzie 1980, 338).

Methodology

To examine the consequences of the legislative changes, this chapter draws on data collected by reviewing relevant documentation (Ontario, Ministry of Community and Social Services 1982; Segal 1982; Meezan 1978) and by interviewing a range of practitioners and interest groups affected by the changes. These representatives included front line social workers in both adoption and "relinquishment" services, including Children's Aid Societies, private adoption services, and maternity homes. They also included a representative from the adoption unit at the Ministry of Community and Social Services and representatives from a number of interest groups including the Ontario Association of Children's Aid Societies, Justice for Children, the Ontario Medical Association, and the Social Planning Council of Metropolitan Toronto. The research was exploratory, intended only to establish a picture of the range and variety of consequences and recommendations for policy changes.

Ten interviews with respondents in the Metropolitan Toronto area were conducted in person and by telephone. Interviewees were asked their views on:

- a) the positive consequences of the legislative changes;
- b) the negative consequences of the legislative changes; and
- c) their recommendations for change.

Responses were open-ended to allow for flexibility of discussion.

Originally the writer hypothesized that there might be a relationship between the roles of respondents and their perceived consequences and policy recommendations. However, those who were interviewed focused on many of the same problem areas, recommended a small range of solutions and conceptualized consequences outside of their own self-interest. Consequently, no relationship could be established and the analysis was limited to establishing the range of consequences and recommendations.

THE FINDINGS

The Consequences of the 1978 Legislative Changes

The findings concerning the consequences of the legislative and regulatory changes are discussed from the perspectives of the two theoretical bodies of literature, highlighting specific issues. Together, they raise a variety of issues perceived as problematic by the respondents. These problematic consequences provide the basis for the recommendations for change. However, this discussion will also examine the positive consequences of the legislation perceived by the respondents and by the authors of the relevant documents.

The data suggests that a number of positive changes resulted from the introduction of the private adoption legislative and regulatory changes. Interviewees noted that there is now a broader choice of services through individual licensees, licensed agencies, and the Children's Aid Societies. This allows both biological and adoptive parents to choose the service that best meets their needs.

Several of those interviewed noted that the introduction of a competitive system had resulted in a greater sensitivity to the needs of the biological parents and greater innovation in relation to them. However, there were differing perceptions of this. One respondent outside the Children's Aid Society suggested that some Children's Aid Society staff were recommending that biological mothers use the private system for placements of healthy Caucasian infants because the C.A.S. service was less sensitive to their needs. However, a C.A.S. representative noted that her agency had created more innovative techniques because of the increased competition. This included a system in which relinquishing parents could have more involvement in the choice of the adoptive parents for their child.

Interviewees commented that adoptive applicants and biological parents often preferred the private system because it was smaller, more personalized, and less bureaucratic. They also suggested that within such a system the clients often felt they had more control of the process. The private system did not force uncomfortable counselling on the biological mother and was less intrusive regarding the putative father. It also did not impose overly lengthy "educative" home studies on adoptive applicants.

In regard to cost effectiveness, the Children's Aid Societies noted the decreasing use of their services for healthy infant placements and expressed concern about staff cuts in their adoption departments. The Ministry noted that fewer adoption agencies had developed than originally expected, and speculated this could have been partly a result of the low fee limits established by the regulations.

The data also suggests that some of the problematic consequences raised in literature on privatization were also being experienced. Several interviewees approached the topic of adoption placement from a universal perspective. They saw the enshrinement of a private system as either a disaster or as an unfortunate change for children. They described the development of a two-tiered system that divided children into two groups: those in high demand served primarily by the private system and others served by the Children's Aid Societies. These "others" included older, handicapped, or non-Caucasian children, and those admitted through the protection system. The Ministry's Children's Act Consultation Paper (Ontario, Children's Act 1982) alluded to criticism of the private system as serving the elite, but did not either support or deny this allusion. However, its recommendations supported the maintenance of the private alternative and did not address this particular issue.

Other individuals who did not necessarily espouse a universal system noted concerns related to undercutting the services of the Children's Aid Society by establishing a competitive system that only serviced children in high demand. Others expressed concern for adoptive couples who were less assertive and financially established. A fair number of respondents were particularly concerned about the security of the child in a system that appeared to be focused primarily upon the adopting couple as the client.

There were a large number of responses concerning accountability, particularly in relation to individual licensees. It was widely accepted that a number of regulations were not being enforced. These included: limiting the number of placements

done by individual licensees; enforcing home study submission deadlines; ensuring that social history information about the prospective child was shared with adoptive applicants before placement; and enforcing the limits on fees. The Ministry appeared to be aware of these problems, but rarely refused to issue a license, revoked a license, or conducted an investigation. The Ministry representative suggested that the fee limit in the regulation was realistically too low and, as a result, the Ministry was not enforcing this regulation. She pointed out that adoptive couples were not reporting fee abuses and consequently there was no reason to investigate such abuses.

Issues raised by interest group theory were also found in the responses. These concerns, relating to the enforcement of the regulations, suggest that aspects of the situation may reflect Mackenzie's (1980) concern about "corporatism," particularly in relation to the individual licensees. His perspective alerts us to the danger of the regulated playing a major role in their own regulation. The fact that the teeth of the legislation lie in the regulations also appears to be integrally related to this issue. It would appear to be much easier for government to overlook regulations than statutes. When important regulations such as home study deadlines and fee charging are not enforced, one may wonder about the effectiveness of the regulating body. With the scarcity of infants, the potential for abuse is great. U.S. information in the mid-1970s has provided us evidence of the kind of abuse possible. Recent media attention in Ontario has revealed licensees making profits, glossing over babies' medical and social histories with adoptive parents, and placing babies with prospective parents on a first-come, first-serve basis (Cohn 1984).

Morton's (1980) remarks regarding expediency were reflected in comments by several respondents. The Ministry representative noted that the Ministry was put in a difficult position when placement was able to proceed except that home study material had not been submitted by the deadline. However, concerns about meeting the short-term interests of all parties generally appear to outweigh concerns that might affect the child's placement in the long-term. A more political perspective of expediency was raised by several people who suggested that the private system was more open to political influence and pressure than the publicly-financed service.

Some of the most serious concerns about the legislative changes reflect Presthus's (1973) observation that government has a tendency to maintain the status quo and defend the strong within society as opposed to the weak. The adoption process is a complex one that must serve the interests of the adoptive parents, the relinquishing parents, and the child. A number of important concerns arise from the fact that the adoptive parents are at the centre of the process because they are charged the cost of the service. Hence, the biological parents and the child are particularly vulnerable in this system. Risks to the biological mother were noted by many individuals and the Children's Act Consultation Paper (Ontario, Children's Act 1982) highlights this area as one of major concern. The legislation allows no intervention with the biological mother before the adoption consent. Practitioners cited cases of mothers who received no counselling or explanatory intervention before the birth of the child or the adoption placement; cases of professionals pressuring mothers to relinquish their infants; and limited, if any, follow-up after the

placement. Several people noted that they felt putative fathers were not sufficiently protected within the system, whether they are denied the opportunity to plan for their child or to give consent to adoption. There were also concerns raised about increased risks to the child in the private system: parents and child are not matched on the basis of the best interests of the child; inappropriate adoptive parents are not appropriately prepared for placement; and the child is afforded inadequate opportunity to remain with either natural parent. These points reflected an underlying concern that the private system is not in the best interests of the child.

Recommendations for Change

The data on recommendations for change appears to reflect Presthus's (1973) observation that problematic consequences tend to be viewed as primarily technical problems. The responses strongly support the position that the private adoption placement system should be maintained. Even those who viewed the system very critically did not recommend its abolition. In addition, the specific recommendations for change fell within a limited range of suggestions and a number of important interest groups had no recommendations.

Of the changes recommended, a number focused on providing increased protection to the biological parents. These suggestions included informing them of the availability of counselling, mandating intervention before the adoption consent or birth of the child, and providing extra funds through government or fees to provide pre- and post-relinquishment counselling.

A significant number of people made suggestions about enforcing regulations. A number suggested that fees should be raised to a reasonable level and that there should be a mandatory reporting of fees or some method of monitoring fees. A large number felt that more teeth were needed in the enforcement process but did not offer specific ways to accomplish this.

The Consultation Paper (1982) made four specific recommendations. The first three focus on the biological parents, including a recommendation that licensees be required to inform biological parents of the opportunity to receive independent counselling and legal advice before consenting to the child's adoption. The paper suggests that counselling could be provided by the social work department of the hospital where the baby is delivered if the mother has not previously sought advice.

Second, the paper recommends that the Ontario Official Guardian interview any relinquishing parent under 18 years of age to assure that the consent is informed before the placement of the child in the adoptive home. At present, this interview can take place once the child is in the adoptive home, although the relinquishing parents may still revoke their consent for up to 31 days after the birth of the child.

Third, the Consultation Paper (1982) recommends that reasonable efforts should be made to inform the biological parents if an application for an adoption license for their child has been rejected. The present system provides no protection in this regard.

A final recommendation focuses on the right of the adoptive parents to have access to the social and medical history of their prospective child. At present, the licensee does not have to share this information with the person conducting the home study

or with the prospective adoptive parents. The paper recommends that the licensees be required to grant this information to the social worker conducting the home study, the adoptive applicants and the person supervising the adoption.

The Consultation Paper (1982) also raises an option recommended by several interviewees.

One variation would be to continue to allow private adoption agencies, but not to grant licenses to private individuals. The potential for abuse appears to be greater for individual licensees who handle adoption as a 'sideline' than for agencies licensed exclusively to carry out this function (Ontario, Children's Act Consultation Paper 1982, 152).

A number of those interviewed suggested that this option would solve many of the serious problems. This change was the most substantial of all the recommendations made.

CONCLUSION:

THE NEW LEGISLATION AND FUTURE OF PRIVATE ADOPTION

This examination of the consequences of the 1978 legislative changes and the recommendations for change is of particular interest because of the tabling of new children's services legislation, including Child Welfare (Ontario, Bill 77 1984). Bill 77 was proclaimed in October 1985 although the sections pertaining to adoption were deferred until a later date. This legislation retains the licensing system for private adoption and incorporates some of the changes recommended, particularly those included in the Children's Act Consultation Paper (1982).

Consequently, Section 131 4(a) (ii) (Ontario, Bill 77 1984, 115) states that consent to adopt will not be granted unless the relinquishing parent has been advised of his or her right "to be informed, on his or her request, whether an adoption order has been made in respect of the child," and (b) "the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent" (Ontario, Bill 77 1984, 115). In addition Section 155 (Ontario, Bill 77 1984, 129) states that any society or licensee that places a child for adoption shall inform any person who consented to adoption whether an order has been made for the child's adoption.

Both of these clauses take steps to protect the rights of the relinquishing parent. However, counselling or outside legal intervention is not mandatory unless the parent is under 18, in which case the Official Guardian may intervene to assure consent has been fully informed. In addition, Section 131 (ii) (Ontario, Bill 88 1984, 116), dealing with the role of the Official Guardian, does not incorporate the Consultation Paper's recommendations to require an interview with the Official Guardian before the child is placed in the adoptive home.

Section 157 (Ontario, Bill 77 1984, 130) deals with the inspection of adoption information. Subsection 2 (d) allows "the disclosure of information of a prescribed class to a person whose access to the information, in a Director's opinion, is necessary to protect any person's health" (Ontario, Bill 77 1984, 130). This section appears to allow the disclosure of social history information to the person conducting a

home study, the prospective adoptive parents, and a person supervising the adoption. However, the regulations will prescribe the classes of information for these purposes (Ontario, Bill 77 1984, Section 203, 3, Part XI Regulations, 163).

Finally, the limit of two licenses per year for an individual licensee appears to have been replaced by section 176 subsection 4 (Ontario, Bill 77 1984, 144), which allows licensing for adoption placement only to an individual or a non-profit agency, and by subsection 5 that allows for a license renewal. Thus, individual licensees will be licensed similar to an agency rather than applying for a license for each adoption. It is hoped that this change will rectify the problems associated with individual licensees.

Expenses that may be charged by licensees will again be controlled by regulation. Section 159 (d) allows the prescribed expenses of a licensee, or greater expenses approved by a Director (Ontario, Bill 77 1984, 133), and Section 203 (f) Part XI Regulation states that regulations may prescribe expenses charged, classes of such expenses, and the terms and conditions under which expenses may be charged (Ontario, Bill 77 1984, 163).

These are the major changes incorporated into the new legislation. They do not fundamentally change the system that is in place; they do make an attempt to further protect the rights of the relinquishing parent and the child. Annual licensing is intended to prevent the abuses commonly associated with individual licensees. The specific changes focusing on the biological parents are hoped to address the concerns that have arisen in regard to their rights.

However, it is difficult to see how any of these changes will guarantee the prevention of abuse. There appears to be little in the legislation to ensure enforcement. Unfortunately, we cannot adequately assess the corresponding regulations as they are not yet available. As in the previous legislation, the specific measures regulating control of information, fee charging, and deadlines of submissions are not in the statute. Meezan (1978) states, in relation to the U.S., that enforcement of regulations has proved to be exceedingly difficult, if not impossible, without support from the parties involved with the adoption, including biological parents, adoptive parents and third parties. With the growing scarcity of infants, and the high demand by adoptive parents, support may be difficult to obtain. It remains to be seen whether the Ministry will enforce regulations more strictly under a new licensing renewal system, or whether individuals will report abuses.

At the same time, there appears to be a great deal of support for the private adoption system. It is increasingly being used by both the adoptive and biological parents. Its advantages have been praised by its adherents, who say it provides an equal if not superior system to the one administered by the Children's Aid Societies. Recent media coverage has spoken positively of its benefits as an alternative system (Dineen 1984; Sweet 1985). In particular, adoptive applicants praise the more personalized service, the greater flexibility of criteria for adoptive couples, the feeling of control they have in the system, the strong likelihood that an infant will be placed directly from the hospital, and the fact that babies appear to be available more quickly through the private system. Biological mothers often prefer to work privately, using their own doctor to initiate the process. They are hesitant to use the Children's Aid

Societies' services which are perceived as more stigmatizing and intrusive. Strong attempts have been made to assure the public that the system is not a black market, and that it is legal and regulated. There is little doubt that it is firmly established in Ontario.

It is significant that no one recommended the abolition of this system, even those who were highly critical of it. As the Consultation Paper (1982) notes, several Canadian provinces have outlawed it while another has outlawed third party involvement. There are a number of possible reasons for this anomalous Ontario situation. First, it appears that those primarily concerned about the abuses of the system are practitioners working within it. Interest groups, who might have been expected to be concerned, did not appear to be aware of any problems. They either felt that adoption was not a major social issue, or that other adoption issues were more significant. Second, it would appear that there are major concerns about the quality of the publicly-funded C.A.S. system. There appeared to be an acceptance that the C.A.S. was stigmatizing, often overly inflexible and bureaucratic. C.A.S. also had criteria that appeared discriminatory to some adoptive couples, did not give priority services to biological mothers who wished to relinquish infants and was generally experiencing pressures that were lowering the quality of service. Although people were critical of the private system, they were equally or more concerned about the quality of the alternative.

Third, it appears that a private system is firmly established and is being used by a large proportion of those relinquishing and adopting healthy Caucasian infants. The Consultation Paper (1982) suggested that the abolition of the private system could result in the development of a "black market" and that a regulated private system was preferable. Some respondents may have agreed with this argument. Others might have believed that the abolition of the system was not politically feasible.

The outcome of this situation, however, appears to be the establishment of a system that has some serious drawbacks. The legislative changes were designed to control and regulate a system that was potentially abusive to adoption clients. However, it appears that a number of these regulations have not been enforced and that there have been considerable risks to all parties, particularly the biological parents and the children. Information from other jurisdictions suggests that this situation is not unique to Ontario. Although the new legislation is designed to curb these abuses, there is no guarantee that the situation will change.

Private adoption placement in Ontario has established a two-tiered system of service that divides children and parents. Those children in demand because of their age, health, and racial background are served by one system catering to those with greater financial capability and access to service. Other children and parents are served by a publicly-funded system that must fight to maintain a quality service. Quality becomes increasingly difficult as the system becomes more stigmatized because children in demand are served elsewhere. Parents who cannot afford to buy services on the adoption market or who have less access to the private system, must use a lower-quality service that imposes longer waiting periods and places an increasingly smaller percentage of the available infants. Such a situation is both inequitable and unjust.

By transferring the funding base from the public sector to the adoptive parents, the private adoption system has changed the focus from the "best interests of the child" to the interests of the adoptive parents. Although attempts can be made to protect children's rights through regulation, their needs can never be the overriding concern in such a system.

It would appear that Ontario has chosen to put cost-effectiveness concerns over concern for delivery of adoption services in an equitable child-centered system. Faced with the alternative of creatively altering a publicly-funded system to enhance its service quality, the province has instead chosen to support a private alternative. This has resulted in a dual system that has effectively established a market for our children. Some might argue that this system is an innovative approach of which we should be proud. However, those of us who value an equitable child-centered adoption placement system would not agree. Instead, we would prefer to see such innovation support the development of a system to serve all the children of Ontario, not just those in demand.

NOTES

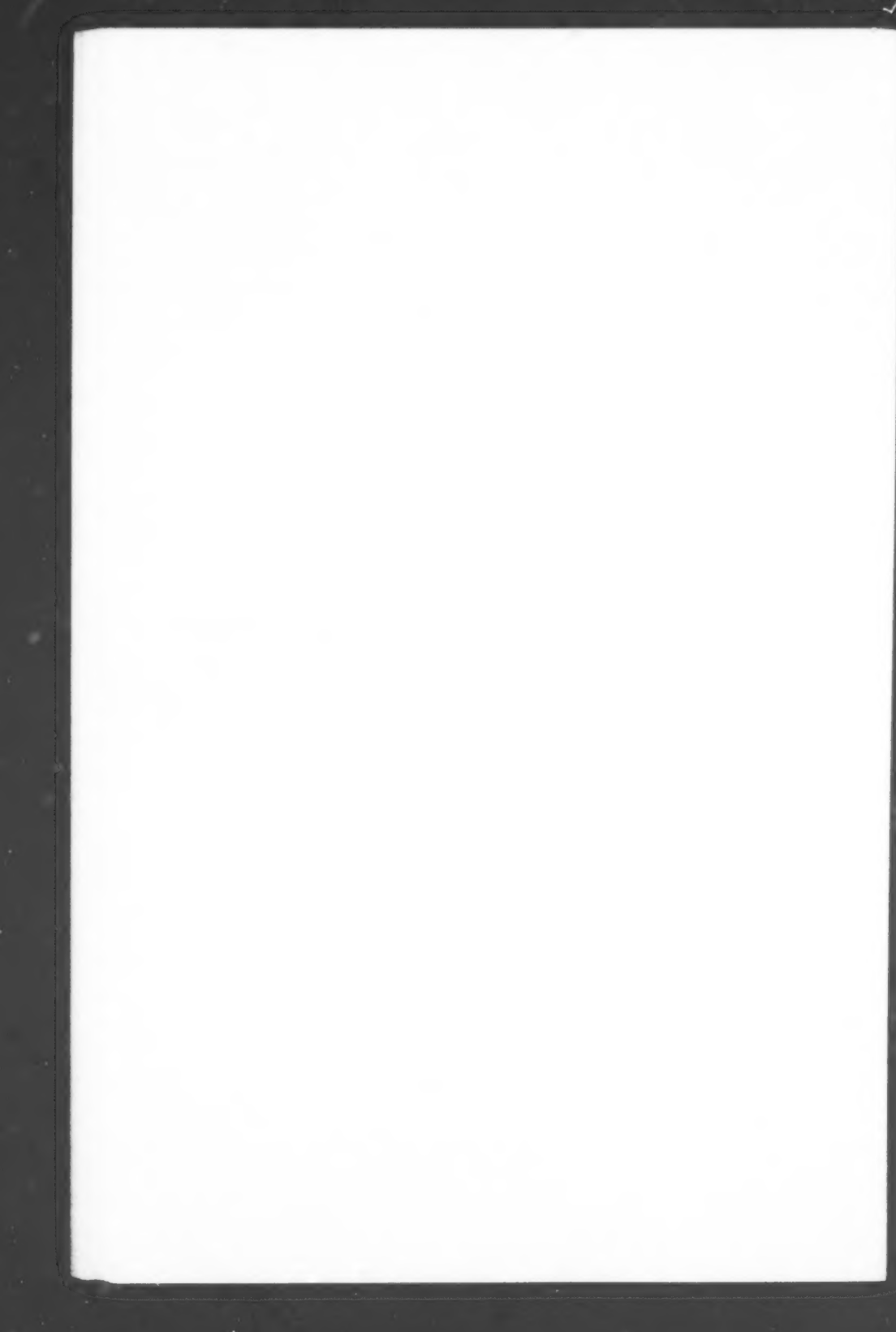
1. The author acknowledges the helpful comments and support of Dr. E. McIntyre and Dr. Lorna F. Hurl in the preparation of this chapter.

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Sex Related Social Issues



FIVE

CHILD SEXUAL ABUSE AND ITS SEQUELS: AN ALBERTA CASE STUDY AND A COMMENTARY ON THE BADGLEY AND FRASER REPORTS¹

Christopher Bagley

INTRODUCTION

It is impossible to consider the prevention, management and treatment of child sexual abuse in any province without first considering the federal report on Sexual Offences Against Children by Dr. Robin Badgley (1984). His committee's report, issued in August 1984, has many important things to say about policy and service innovation, and about how the policies of the different provinces can be coordinated through joint federal and provincial initiatives.

First, the report, in its national survey of a representative adult population in Canada, shows that child sexual abuse is a very serious problem and affects up to a quarter of female children by the time they reach their eighteenth year. Moreover, the reported rates of child sexual abuse are similar across all Canadian provinces and between rural and urban areas with the exception of Newfoundland, where the rate is significantly lower than in other provinces. The reasons for the lower rate in Newfoundland are not at all clear but are presumably connected with the lower rate of other kinds of social pathology in that province.

In its examination of services for victims of child sexual abuse across provinces, the committee found duplication of services; absence of services; conflict between

services within a particular province; lack of evaluation of particular services; and a general lack of standards and assessment and treatment. The committee reports that:

In the Committee's judgment the information that is available for Canada on these matters is insufficient and fragmentary. In undertaking its mandate, the Committee was afforded an unusual opportunity to learn of the work of a number of innovative programmes providing care for abused children across Canada . . . possibly because of the size of the nation, the accepted principle of using two official languages and the responsibility of child protection services falling under the jurisdiction of the provinces, the Committee found that the activities of many of the programmes were unknown in other parts of the country, and often, elsewhere in the same province. Instead of looking at precedences that had evolved in other provinces, and drawing upon this experience, there was a widespread predilection to assume that such developments did not exist, or to look abroad for consultations about new developments. In the Committee's judgment, the numerous developments that have evolved and that are going on in Canada concerning all aspects of child abuse, including sexual offences against children, would be considerably strengthened by the more extensive sharing of this experience. (p. 560)

On reporting procedures, compared between provinces, Badgley (1984) concludes:

What is required is a central source of good information for each province rather than the existing inefficient and inaccurate classification systems now in use which serve little useful purpose as a means to protect sexually abused children. To the extent that existing systems of classification used by the police, physicians and child protection workers remain unaltered, they will continue to exist by virtue of entrenched custom, professional indifference or the symbolic purposes of appearing to serve sexually abused victims, but in fact not doing so for most children and youths against whom sexual offences are committed. (p. 580)

On the coordination of services, Badgley and his committee report that:

There are commanding reasons, as documented in the child protection surveys undertaken across Canada, to conclude that the work of these services in relation to child sexual abuse must be sharply strengthened, augmented and more effectively coordinated with the services provided by other helping professions. (p. 613)

Badgley and his colleagues found inefficiency and chaos in their cross-provincial survey of services for sexually abused children across Canada. But they draw attention to pockets of good practice. It does exist in some provinces, particularly in urban areas. A conference organized by Klinik of Winnipeg, an agency providing treatment for sexually abused children, was held in February 1984 in Winnipeg. It brought together people working in this field from all over Canada and the United States. For the first time, many people who deliver service learned of treatment facilities available elsewhere in Canada.

The Badgley Committee's key solution to the lack of standards and coordination in the treatment of sexually abused children is the creation of the Office of the Commissioner, reporting to the Prime Minister's office, to act in conjunction with the Department of Justice, the Department of National Health and Welfare, the provincial Attorneys General, and local departments of health and child welfare and non-government agencies. The office would first develop minimum standards for investigation, assessment and care of sexually abused children, to be provided by each of the main public services (police, medical and child protection services).

Second, Badgley and his colleagues recommend that provincial ministers responsible for child protection services should (1) review provincial child welfare legislation to ensure the specification of assessment procedures to be undertaken on behalf of sexually abused children; (2) introduce any appropriate amendments to this effect; (3) develop a standard protocol for the collection of information, the conduct of assessments and the recording of findings, and other necessary procedures; (4) the provincial ministers should make this protocol widely available, particularly to those likely to have first contact with sexually abused children, and should provide instructions in the use of this protocol.

The Office of the Commissioner which Badgley recommends would coordinate and fund initiatives in this area, including cost-shared funding with the provinces.

Nearly two years after the Badgley Report appeared, there has been total silence from the federal government on this issue of the coordination and improvement of services for sexually abused children. Provincial governments have taken no overt initiatives with respect to the Badgley Report either. Reasons for this lack of action are not all clear, although there is some indication that a report commissioned by a Liberal government is unacceptable to the present Conservative administration, despite the Report's rational argument, its clear basis in evidence, and its commitment to the protection of abused children, in non-partisan ways. These notes were written in May of 1986; readers will judge for themselves the degree of progress, if any, in federal and provincial initiatives with regard to the recommendations of both the Badgley and the Fraser Committee Reports.

SERVICES FOR SEXUALLY ABUSED CHILDREN IN ALBERTA

Alberta is divided into six social service regions, each of which has its own director with considerable autonomy in deciding how services should be delivered and how money should be expended on any particular service within the region. Two of the regions, Edmonton and Calgary, are largely urban; two are semi-rural, based in Medicine Hat in the southeast and Lethbridge in the southwest; two are entirely rural, the northeast and northwest regions. Most initiative with regard to services for sexually abused children has been taken in Edmonton and Calgary regions, and least initiative has been taken in the rural regions. Reporting rates of child sexual abuse have increased by 100 per cent per annum over the past three years, but this increase has taken place almost entirely in the two urban regions. Either much less sexual abuse is occurring in rural and semi-rural regions, or there is an increasing profile of the problem in the two urban regions because of media exposure of the

problem and an increasing number of educational programmes encouraging children to recognize child sexual abuse and to report it to adults.

In the past there has been an ambiguous duty on anyone discovering child sexual abuse to report it to the provincial director of child welfare, because the section of the old Child Welfare Act requiring reporting was never enacted. However, the new Child Welfare Act, which came into force July 1985, makes reporting mandatory. This Act may lead to a further increase in reporting of cases.

The Edmonton region has taken the lead in Alberta in enunciating a philosophy of the treatment of child sexual abuse which can inform practice development. In summary, the comprehensive and widely-promulgated document, "Statement on Child Sexual Abuse: Philosophy and Operating Principles" (ASSCH 1984) declares:

The intent of the philosophy and operating principles is to clarify the regions' position on child sexual abuse and to provide a basis for the developing protocols, policies, procedures and planning.

Child sexual abuse is a violation of the Criminal Code of Canada and of the Child Welfare Act of Alberta. Operationally, it is defined in the statement as follows: child sexual abuse shall include any sexual intercourse, sexual molestation, exhibitionism, or sexual exploitation involving a child, that could be in violation of the criminal code or render the child in need of protection under the Child Welfare Act. This includes both intrafamilial and extrafamilial child sexual abuse.

All sexual abuse, whether intra- or extra- familial, must be reported to the director or to a child welfare worker of the department and because it is a criminal offence the child welfare worker must in turn notify police authorities.

This statement on child sexual abuse emphasizes the following themes:

Children are sexually abused most often by members or acquaintances of their families.

Families tend to respond to disclosures of intrafamilial sexual abuse with denial, support for the perpetrator, disbelief of the victim, and ostracising the victim if he/she persists in disclosure. Constructive intervention at this stage requires skill and coordination.

Appropriately skilled personnel from the police and child welfare must work together in a coordinated and collaborative fashion. The primary role of the police is to gather evidence; the primary role of the child welfare worker is to ensure the protection of the child and siblings. A basic premise at the investigative stage is that in order for intervention to be effective charges must be laid against the perpetrator. After disclosure it is essential for the child and perpetrator to be separated. The preference is always that the perpetrator leave the home rather than the victim. When indicated, reconstruction of the family is the desired form of treatment. Where reconstruction is contraindicated or where abuse has perpetrated from outside the family, protection of the child and appropriate treatment are also required.

Child welfare involvement is required at the point of investigation through to treatment resolution and follow-up.

Child sexual abuse is a community problem which requires shared responsibility for improving services in the areas of detection, intervention and prevention.

This protocol underlines the complex nature of investigation in child sexual abuse. Once child sexual abuse is reported, a complex train of events is set in progress. The child protection worker, to whom the abuse is reported, must ensure the child's safety from further assault. Too often, the child is pulled from home, in the case of intrafamilial abuse. But the constructive alternative is to require the alleged offender to leave home until the matter is resolved legally. This is the same alternative preferred in family violence, where it is too often the battered woman who has to leave her home for a shelter, rather than the violent offender. The new Alberta Child Welfare Act does allow the possibility of supervision order, under which the child remains at home and the alleged assailant is required to leave. We have yet to see how this will work in practice.

Schools are an important part of the network of individuals and institutions involved in the detection, referral and treatment of child sexual abuse. School boards have reacted to the problem of child sexual abuse in an uneven and haphazard fashion. Of all school boards in Alberta, the Edmonton Public School Board has acted in the most vigorous and coordinated fashion, with the establishment of a standard protocol for investigation and referral when child abuse is suspected (Strembitsky 1985).

Sex crime detectives and Crown prosecutors are also involved in cases of child sexual abuse. If the child is to be a witness, she needs careful support. Physicians may need to examine the child, and here too, the child needs independent support. Since child sexual abuse is frequently traumatic for the child's mental health, both in the long- and short-term, referral to a mental health specialist for assessment is often required. Then a decision has to be made about which specialist agency should undertake long-term therapeutic work with the child and her family.

These procedures are complex and difficult. When resources are too few, when child welfare workers are naive about child sexual abuse, unsupported, or over-worked, and when specialist services do not exist, or in insufficient quantity, many children get lost in the system.

The data available is good evidence to support the following propositions:

1. The majority of sexually abused children in Alberta (as elsewhere) do not come to the notice of an adult (apart from the abuser) at all — kids are unable to tell an adult because reporting frameworks are ambiguous or ill-defined.
2. A majority of sexual abuse victims known to child protection workers are not referred for specialist assessment and treatment, and their long-term mental health problems are not addressed.
3. The majority of children with serious behavioural or emotional problems in the care of the director of child welfare in Alberta were victims of child sexual abuse; this is particularly true of girls. The acting-out and runaway behaviour of these children is a direct effect of sexual abuse, but this abuse has never been

acknowledged or addressed by the child welfare system. Rather, deviant kids are stigmatized further by a system which punishes "bad" kids.

Let me illustrate these propositions by a case history from Alberta. Case histories are valuable, I think, because they can illustrate dramatically the malfunctioning of social service delivery systems. Such cases put the onus on those who deliver social services to show that the case is, in fact, an isolated or atypical one.

This is a case of Margaret. Margaret, who lived in a one-parent family was a lonely, isolated child. She had few friends, and wasn't close to her mother. When she was eleven a neighbour and family friend sexually assaulted and finally raped her over a period of months. This precipitated a crisis of withdrawal, moodiness, crying and wandering from home, but she wasn't able at that time to reveal the sexual abuse. Her exasperated mother sent her to stay with her father in another province for a time. In this man's house she was further sexually abused. On return to her mother's house she was again in conflict with her mother, and finally took off at the age of thirteen. She was soon recruited on the streets by a leading pimp and for two years was a high-priced juvenile prostitute. She gained nothing from this experience except grief and further self-disgust. She was admitted to hospital after drug overdose, and then went to a group home as a temporary ward of the province. In the group home she was able to reveal for the first time the earlier sexual assaults on her by her father and the family friend. The only person she was able to talk to, however, was a sympathetic, but untrained aide in the group home. The so-called professionals in the home, as well as a social worker, agreed to "let sleeping dogs lie" hoping she had blanked out her traumatic past. She entered a very withdrawn phase, and her reluctance to talk about things again was taken as an acquiescence in this denial. As one of her workers put it, "even if we want to refer her for therapy, there was nowhere in this city we could send her." Margaret was returned to her mother, since the province no longer held any legal responsibility for her when she had turned sixteen. It's not clear what happened between her and her mother, but after two months she was admitted to hospital after a serious suicide attempt. She had been diagnosed as borderline psychotic and in her acutely withdrawn and depressed state had been, at the age of sixteen, in a mental hospital for the past two months. She's been treated by psychotropic drugs, and still no one had offered her any therapeutic program which might exorcise this terrible ghost from her past. She remains in a permanent state of self-disgust. The best she can achieve is a state of numbness and detachment from herself. (Bagley 1985a).

THE EXTENT OF CHILD SEXUAL ABUSE IN ALBERTA

How widespread is the problem of child sexual abuse in Alberta? The Badgley Committee's National Survey of 2,000 adults across Canada suggested that 22 per cent of women, and 9 per cent of men had been the subject of serious and unwanted sexual abuse before the age of 18, involving at least the touching or fondling of

the genital area through to the grossest form of sexual abuse, including intercourse (Bagley 1985a).

In a replication of David Finkelhor's American work (Finkelhor 1979), we surveyed 600 University of Calgary students, including in our test battery a standardized measure of self-esteem. We found, first of all, that 19 per cent of women, and 9 per cent of men reported an event of serious child sexual abuse. We inquired only about events up to age 16, so we covered a shorter period than that considered by Bagley and his colleagues.

Self-concept, as measured by the Tennessee Self-Concept Scale, was significantly depressed in those students who recalled experiences of child sexual abuse (Sorrenti-Little, Bagley and Robertson 1984). This finding held for both men and women. Students, of course, are the most successful segment of youth, at least in educational terms. But other evidence suggests that at least half of child sexual abuse victims drop out of school before graduation and so do not go on to university (Bagley, 1985b). A random sample of a community population should reveal a higher rate of child sexual abuse.

We explored this hypothesis in a community mental health study of 377 women aged over 18 in the Calgary population (Bagley and Ramsay 1985). Twenty-two per cent of these women reported an incident of serious sexual abuse up to the age of 16. The rate for women under 40 was 28 per cent and women over 40 was 18 per cent. There was some evidence from our survey that the rate of child sexual abuse is increasing, particularly child sexual abuse within the family. Fifty per cent of abuse in this survey occurred within the family, a similar finding to that observed by Russell in her study of a random sample of adults in San Francisco (Russell, 1983). Only 2 per cent of those experiencing sexual assault had been able to report this to an independent adult; in not a single case in our survey had the authorities intervened to protect the child.

The adult mental health of women who experienced child sexual abuse was dramatically poorer than in the non-abused women. The 82 former victims in this survey were twice as likely to suffer from chronic psychoneurosis as those who had not been abused, and were twice as likely to suffer from serious episodes of depression. The rate of past suicide attempts and current suicidal feelings was five times higher in the previously abused group. These women were also five times as likely to have received psychiatric treatment in the past year, and were four times as likely to have very poor self-esteem.

We concluded, from various causal analyses, that child sexual abuse combines with other childhood deprivations, including separation from a parent, and emotional or physical abuse by a parent or parent figure, in causing this dramatically poorer mental health of adults who experienced sexual abuse in childhood (Bagley and Ramsay 1986).

An obvious policy conclusion is that adequate channels for revealing abuse in childhood, good coordination of services at the time of revelation, and prolonged and skilled treatment, can prevent this profound and long-term impairment of mental health. But in Calgary the Department of Social Services, through its system of contracted services, funds specialized treatment for less than 100 child victims each

year. Yet our epidemiological evidence suggests that there are at least 1000 new cases of child sexual abuse in the Calgary population each year, so it is clear that only a small proportion of children who need intervention and treatment are actually getting it. Since the child and her family must be retained in therapy for at least a year, and often longer, the back-log of cases awaiting treatment is huge, notwithstanding the fact that the majority of child sexual abuse cases still do not come to anyone's attention. We can be sure about this lack of treatment simply by comparing the rate of reporting and the prevalence of abuse, which we can estimate fairly accurately from our community mental health survey.

Surveys in Edmonton and Calgary have shown that at least 50 per cent of adolescent females who are in trouble of some kind, particularly those in shelters, group homes or on the streets, have been sexually abused at home and have run away from home as a result (Bagley 1985c). Social services have done very little to help these girls. Some are recruited into juvenile prostitution, and work in Calgary and Edmonton indicates that at least 65 per cent of juvenile prostitutes have been the subject of previous sexual abuse (Bagley 1985d).

If an adequate system of reporting, coordination of investigation services and an adequate referral system for systematic therapy for victims existed, then many of the long-term mental health problems and the associated institutional care required could be avoided. In other words, the provision of good services at an earlier stage, as well as vigorous prevention programmes, could be very cost effective (Anderson and Mayes 1982).

In an ideal system, using the model developed by Anderson and Mayes in Calgary (a modification of Giarreto's San Jose programme) our case study, Margaret, would have been able to reveal the abuse much earlier, most likely in a school system in which both students and teachers had been educated about the possibility of sexual abuse, and ways to avoid and report it.

CONCLUSIONS: IMPLEMENTATION OF THE BAGLEY AND FRASER REPORTS

Paralleling the confusion about detecting, referring and treating child sexual abuse, there exists profound confusion in Canadian law about whether some sexual assaults upon children are in fact illegal. For example, the Report of the Special Committee on Pornography and Prostitution in Canada (Fraser 1985) found that:

To be protected by the Criminal Code, juveniles over fourteen must have a previously chaste character, and even then, the Criminal Code protects only against intercourse. For example, a person could not be charged with requiring a 12-year-old girl to masturbate him or perform fellatio on him. None of these provisions applies, in any event, to acts performed on young males, whether by males or by females (p. 594).

The context for this conclusion should be specified. The Fraser Committee was considering only some "voluntary" act, in which the child performed the sexual service for the adult in exchange for money. If the child were threatened or coerced

into performing the sexual act, then presumably the sexual assault would, in fact, be illegal.

A further quotation from the Fraser Committee Report shows how some family sexual assaults may not be illegal. The Committee reported evidence from a children's service centre in Winnipeg:

As we delved into the literature in the area, we discovered . . . that our observations were consistent with experts in the field who have acknowledged that teenage prostitution is a point on a continuum of an early destructive sexual experience. One recent case in which we were involved was that of a young woman who used to obtain her allowance for performing fellatio on her father; for her it was a natural progression to other forms of selling sex (p. 352).

Ironically, this father's actions would only have been illegal on the first two or three occasions on which he offered his daughter money in exchange for sexual service. But after that she was no longer "of chaste character," and the transaction was no more illegal than that carried out between any client and a teenage prostitute. Only if he had required his daughter to have intercourse would his action have been illegal.

We understand that a law to end such anomalies is being drafted, and although this was to be introduced in Parliament in the fall of 1985, it failed to appear. No action on the Badgley Committee's comprehensive proposals for service provision for sexually abused children had emerged by May 1986, despite the fact that the Fraser Committee endorsed these proposals and further proposed, among other recommendations, that:

The government of Canada in conjunction with the governments of the provinces and territories should ensure that there are adequate social programs to assist women and young people in need (Recommendation 51, p. 527),

and that:

The government of Canada in conjunction with the governments of the provinces and territories should undertake the direct funding or indirect financial support of community groups involved in the care and welfare of both practicing and reformed prostitutes, so that adequate social, health, employment, educational and counseling services are available to them (Recommendation 53, p. 530-531).

There is no indication that the responses of either federal or provincial governments to the Fraser Committee Report's proposals are any more favourable than their responses to the proposals of the Badgley Committee. Although any provincial government could take action on its own initiative, waiting for the federal government to take the lead is a useful excuse for inaction. However, the government's only response has been to sweep the problem of sexual abuse out of sight, off the streets (in a hastily drafted bill to make soliciting illegal, contrary to the Fraser Committee recommendations), and to promise some minimal legal reform. But there is no action to prevent sexual abuse and to fund and promote services to treat its victims adequately.

The Badgley Report's publication has however increased both public and professional awareness of the problem of child sexual abuse, and possible ways of responding. While federal and provincial initiative has been lacking, initiative is being taken in local areas, and within particular regions. Examples of this initiative have come from Saskatoon (Matthews 1985), Halifax (MacFarlane 1985), Vancouver (Zingaro 1985), Toronto (Dawson 1985) and Winnipeg (Briere 1985). While governments would applaud such local initiatives, they have failed to support and stimulate them, as the Badgley Report advocated.

In June 1986, in response to pressure from a variety of voluntary agencies, the federal government finally announced legal and programming changes to protect and support sexually abused children (Government of Canada, 1986). Although ignoring the Fraser Committee recommendations on pornography and adult prostitution, it was accepted that juvenile prostitution should not become a status offence (thus supporting Fraser rather than Badgley). Instead, the *clients* of juvenile prostitutes will be prosecuted. As Badgley advocated, the Canada Evidence Act will be amended, to allow hearsay evidence about the assault upon the child to be introduced; and the law on sexual assault on children will be clarified. Whether such recodification will remove all of the anomalies referred to above, remains to be seen.

The federal government has agreed to create the post of Special Adviser on Sexual Abuse (Badgley's "Commissioner") who will report to the "lead federal minister," who will be the Minister of Social Services (and not the Minister of Justice, as some had feared).

The Special Adviser will, in turn, be advised by a committee with representatives from each of the provinces and territories: this appears to be an attempt to accommodate the concerns of some provinces about the creation of a powerful and independent commissioner, as Badgley had advocated. The Special Adviser will have available a budget of \$20 million to be spent over a five-year period on "social and educational initiatives to provide leadership and focus for the national effort to combat child sexual abuse." This money will be spent on research and educational programs, and on research and demonstration projects.

The government white paper (1986) says, hopefully:

In the final analysis, success will depend on the development of effective responses at the level of local communities and will involve much more than the expenditure of money. It will require: increased communication; coordination among a variety of service providers in a variety of fields; knowledge of how to develop coordination and cooperation; greater knowledge of what works and doesn't work in treatment and prevention.

In the next five years we may be able to reach a conclusion about whether these grand hopes became reality, or remain an illusion.

NOTES

1. Based on papers presented to the Second Conference on Provincial Social Welfare Policy, The University of Calgary, May 1985; and to the Second Biennial Conference

on Criminology, Simon Fraser University, on Responses to the Badgley and Fraser Reports, May 1985. A version of this paper appeared in *The Social Worker* in Summer 1986.

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SIX

PORNOGRAPHY AND PUBLIC POLICY: CONFLICTING VALUES — CONFLICTING STATUTES

Kathleen E. Mahoney

Statutes are embodiments of a society's culture. Their carefully thought-out words and concepts mould and influence the behaviour of the citizenry. They have an educational effect by their very formulation and contain many of the community's most important self-educating values. At the same time, they provide means to protect those values. It is the writer's view that, in reality, laws often do not reflect the values of all the population. Rather, they reflect the values of some of the citizenry, particularly those who have the power to make and interpret laws. As governments come and go and the values of the power structure change, surviving laws sometimes conflict with the values of a later generation. The obscenity law is a case in point. It is argued that the values protected by many of the laws pertaining to obscenity are out of step with modern values, particularly the value of equality. I have entitled my chapter "Conflicting Values — Conflicting Statutes" because, on the issue of obscenity, not only do philosophical values directly clash but different statutes addressing the problem have fundamentally conflicting premises.

In the first section of the chapter the competing philosophical positions, and the values they protect, will be discussed. There are three distinct political philosophies which address obscenity, each protecting different competing values. The philosophies can be labelled liberalism, conservatism and feminism. The liberal philosophy protects individual freedom, the conservative philosophy the organizational structure of society and its moral fibre, and the feminist philosophy egalitarian values. The ways these philosophies and their underlying values conflict are analyzed and the legitimacy of the values protected is discussed.

In the second section, various pieces of legislation addressing obscenity and expression are examined to find what values they protect, and how they coincide with the competing philosophies discussed in the first section. Some conclusions are drawn as to the direction and force of public policy in this area. The legislation examined includes the *Criminal Code*, the *Customs Act*, the *Post Office Act*, the *Broadcasting Act*, the *Canadian Human Rights Act* and the *Canadian Charter of Rights and Freedoms*. Samples of provincial theatres legislation and human rights legislation will be examined and some attention is given to municipal legislation on the display and marketing of obscenity. In the final section of the chapter, the whole scheme of legislation is critically evaluated and suggestions are made to address some of the fundamental problems identified.

COMPETING PHILOSOPHIES AND VALUES

Two conflicting philosophies have dominated the historical development of the obscenity law — "conservative" and "liberal" philosophies. The conservative philosophy on censorship of obscene materials is that obscenity should be banned because it undermines the foundation of society through the promotion of radical sexuality.¹ Obscenity is judged by the intrinsic wickedness or virtue of the material in question. Underlying a determination of wickedness or virtue is an assessment as to whether or not the material poses a threat to the organizational structure of the society and its institutions. If the material poses a threat, there is sufficient reason to censor it.

Originally, conservatives defined morality in individual terms from a religious perspective (See Gerber 1965, 214-217). Later, the fear that obscene publications could undermine the structure of society developed. The writings of Ernst and Segal make this evident:

It is important to understand that sex radicalism in modern life is the best general index of radicalism in other spheres. The man who publicly upholds birth control, the single standard, free love, companionate marriage, easy divorce, and legitimization, is a man prone to play with subversive ideas on private property, to be attracted to criminal syndicalism, to be dubious about the House of Lords, or about the fitness of the republican party to govern, and to question the general efficacy of prayer. When such an individual is attacked under sex censorship it is assumed that no very great tenderness for his rights need be shown (Ernst and Segal in MacMillan 1983).

More recently, former President Nixon expressed this fear when he said, "if an attitude of permissiveness were to be adopted . . . this would contribute to an atmosphere condoning anarchy in every other field and would increase the threat to our social order as well as our moral principles" (MacMillan 1983).

Unlike the conservative view, the liberal philosophy on censorship is unconcerned with the inherent character of obscenity. Instead, liberals ask whether more harm will be caused to individual freedom by banning the obscene material than by permitting it. Suppression of material, including obscene material, is seen as harmful because it is believed to erode the fundamental freedom of expression upon which

a democratic society is based. Liberals say that individuals are the best judge of their own interests and that individual freedom of expression is a right which should be upheld, however distasteful one finds obscenity, as long as the material does not result in direct harm. If it can be shown that direct harm would result, liberals would agree to censor (See Canadian Civil Liberties Association 1984).

Liberals find support for their moral values in the work of philosophers such as John Stuart Mill. Mill posited that the only way the truth can emerge is through a form of natural selection in a "free market" of ideas (Mill 1859): if all ideas are allowed expression, good ideas will multiply, bad ideas will die out. Mill hoped this theory would assist in furthering . . . "the permanent interest of man as a progressive being" (Mill 1859, 33). Mill was of the view that the only reason the state could justify interfering with expression would be to prevent harm to others (Mill 1859, 9). Mill never clarified what kind of harm he envisaged, but mainstream liberals have interpreted "harm" as being clear and present danger² which would cause physical harm to others, or involuntary offense caused when those who do not wish to view obscenity are involuntarily exposed to it. Liberals are of the view that the "marketplace of truth" theory should apply to obscenity regardless of whether it sets women apart as objects of male sexual pleasure, frustration and violence.³ As long as no causal link is made between obscenity and abuse of women in real life, there is no justification for censorship. In essence, conservative morality gives priority to institutional integrity whereas liberal morality emphasizes individual liberty.⁴

Recently, a third, competing, philosophy has emerged in the debate. The third philosophy is an egalitarian view based neither on religious, moral principles like the conservative view nor focused on individual liberties like the liberal one. This new approach questions the wisdom of both orthodox philosophies because they fail to protect equality. According to the priorities of this morality, when expression undermines equality principles, the right to freedom of expression can be legitimately curtailed.

It is not surprising that the egalitarian arguments are relatively new and have been articulated in the obscenity debate by feminists. For most of history, the question of obscenity, morals and the role of law has been debated by men, in spite of the fact that men's moral values have long been recognized to differ from those of women.⁵ Women have been conspicuous by their absence in decisions regarding the definition of obscenity and the characterization of its harms. One of the reasons for this absence is that the law traditionally placed women in the same "protected" category as lunatics, drunkards and children (Dranoff 1977) and denied them access to the political means to change that categorization. In the law-making process, women's views were neither sought nor given any credibility. This attitude has been slowly changing since 1928, when women became legal "persons" in Canada.⁶ There is some evidence that women's views are beginning to be heard on the subject of obscenity.

I have argued elsewhere that both the libertarian and conservative moralities are male-defined and protect male interests at the expense of female interests (see Mahoney 1985). Both conservatives and liberals fail to recognize pornography as a tool of oppression which subordinates women to men. Feminists are careful to exclude non-oppressive sexual expression, such as sex education materials and

erotica, in their definition. In fact, they encourage these types of social expression. Feminist or egalitarian morality consists of fulfilling responsibilities to other people in everyday situations rather than setting up a hierarchy of abstract rules or a repressive sexual ethic. Non-violence and equality are common themes in feminist definitions of pornography and virtually all of which, although they may differ in terminology, stress social context as an essential element.⁷ For example, Helen Longino, a feminist philosopher, defines pornography as "[v]erbal or pictorial material which represents or describes sexual behaviour that is degrading and abusive to one or more of the participants in such a way as to endorse the degradation" (Longino 1980). Debra Lewis, a feminist criminologist, defines pornography as material that "[d]epicts, condones and encourages acts of domination, degradation and violence towards women" (Report of the Standing Committee on Justice and Legal Affairs 1978). The National Action Committee on the Status of Women, among other groups, (Newfoundland Teacher's Association, the New Brunswick Advisory Council on the Status of Women and Le Regroupement Feministe Contre la Pornographie) have adopted feminist writer Jillian Riddington's formulation, which describes pornography as:

a presentation whether live, simulated, verbal, pictorial, filmed or videotaped, or otherwise represented, of sexual behaviour in which one or more participants are coerced overtly or implicitly, into participation; or are injured or abused physically or psychologically; or in which an imbalance of power is obvious, or implied by virtue of the immature age of any participant or by contextual aspects of the representation, and in which such behaviour can be taken to be advocated or endorsed.

The word "pornography" is used by feminists rather than "obscenity" because the term "obscenity" is derived from the latin *ob cenum*, meaning "about filth" and is defined in the Oxford dictionary as material which is "offensive to modesty or decency, lewd; causing or intending to cause sexual excitement or lust." The word "pornography" is preferred because of its original meaning. It is defined in the Oxford English Dictionary as "description of the life, manners, etc., of prostitutes and their patrons" [from *porne* meaning "harlot" and *graphein* meaning "to write"]. "Pornography" more clearly defines what is objectionable: the commoditization of women for the sexual pleasure of men. Rights are conceptualized not as absolutes, but as reciprocal and proportional in relation to others. Feminists look beyond noninterference and autonomy to recognize the value of interdependence. The evil of pornography, from their standpoint, is not that it violates chastity, but that it portrays women, children and sometimes men simply as instruments of pleasure, denying them their value as individual human beings.⁸

The Feminist Definition is Preferable

The harm of pornography in the feminist view, as contrasted with the conservative and liberal views, is neither the erosion of the social order nor necessarily direct harm to individuals.⁹ Rather, the harm is to women as a class of people. By making degradation, humiliation, victimization and violence in male-female relationships appear normal, pornography fosters oppression and entrenches sexist attitudes. The degradation of women as a class results in reduced credibility and opportunity for

women. Participation in public life, equal pay for work of equal value, quality day-care, physical security and other goals become much more difficult to obtain. There is substantial social scientific evidence that pornography results in negative attitudes (Eysenck and Nias 1978, 190; Donnerstein 1980, 277; Report of the Committee on Sexual Offences Against Children and Youths 1984, 1275; Check and Malamuth 1985; Malamuth and Donnerstein 1984). In a recent study, it was found that subjects exposed to violent and degrading pornography demonstrated an increased acceptance of rape myths, increased acceptance of violence against women, increased rape fantasies, increased aggressive behaviour toward women in a laboratory setting, decreased desensitization to sexual violence and an increased willingness to rape (Check and Malamuth 1985; see also Malamuth and Donnerstein 1984).

Feminists criticize the conservative view because it advocates a uniform sexual ethic which subordinates sex to procreation within marriage. Consequently, the concept of the dependent and virtuous woman, without access to birth control, divorce, single life or any of the benefits the law generally confers upon men, is mandated. Men are free to pursue their lives within a society where inequality is rationalized by theories explaining the need for its continuation.

Conservatives, with their emphasis on all sexual interaction, fail to distinguish among the different ways sexual interaction can be depicted. They simply condemn it all. Caught in this net are legitimate materials dealing with sex education, erotica, and moral realism.

The liberal approach to morality is also criticized because of its improper insistence on the application of John Stuart Mill's philosophy to pornography and because it stresses the right of individuals independently of their social context, to the point where the welfare of women and children is compromised. Liberals assume the individuals have equal opportunity to means of expression, whereas feminists say that the unequal distribution of rights in society must be taken into account when women and children are attacked in pornographic messages. They do not have equal access to the marketplace of ideas.

Mill's approach to pornography would say that, in the marketplace of ideas, if the messages contained in pornography are bad, they will die out and be replaced with good ones. More specifically, the view that women are equal to men, and that children deserve to be treated with respect, will prevail. Messages in pornography that women and children are sex objects available to be violated, subjugated and coerced at the will of men will disappear. In fact, the "marketplace of truth" cannot be advanced as the governing approach, because it is belied by the modern genre of pornography and the working of the modern marketplace. Pornographic images proliferate virtually everywhere and statistics of rape,¹⁰ wife battering¹¹ and the sexual abuse of children¹² indicate that egalitarian ideals are far from universally accepted. Similarly, modern mass media communication, unanticipated by Mill, makes it difficult to see how his argument can include all forms of publication, especially pornographic photographs, which are largely devoid of any expression.

Marshall McLuhan, in analyzing the difference between print and photographic images, said:

The logic of the photograph is neither verbal nor syntactical, a condition which renders literary culture quite helpless to cope with the photograph (McLuhan 1964, 34-65).

Further, it can be argued that it is naive to transpose 19th century laissez-faire notions to the multi-million dollar pornography market. A "free market of ideas" implies equal, unhindered access to the marketplace and opportunity to communicate and to be heard for all citizens. The reality of 1985 is that the skills needed to address the citizenry are owned by the mass media. The marketplace of truth — if it ever did exist — has long ago lost its virility to the speed and nature of technological and social change. In today's world, falsehoods can certainly prevail if powerful agencies with enough profit motive gain a hold on the market.

The modern marketplace was taken into account by the 98th Congress of the United States when it recently enacted the "Child Protection Act" of 1984:

The Congress finds that —

- (1) child pornography has developed into a highly organized, multi-million dollar industry which operates on a nationwide scale;
- (2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and
- (3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society (United States 1984).

Gresham's Law, that bad money drives out good, would be a sensible rule of thumb in the commercial world of pornography.¹³ It has also been persuasively argued that Mill, if he were living today, would interpret his words as including the requirements of social justice (Humphrey 1979).

Although there is some overlap among the goals of each of the three philosophical positions, the underlying values of equality, individual freedom of expression and conservative moralism embody competing and irreconcilable differences. The second part of the paper examines legislation pertaining to obscenity and free expression. The legislation is examined for its aims and purposes, its scope and limits, its value to society and the societal values it represents.

COMPETING STATUTES

Legislation dealing with sexual expression is wide and varied. In the federal jurisdiction, the *Criminal Code*, *Broadcasting Act*, *Customs Act*, *Post Office Act* and the *Canadian Human Rights Act* address obscenity. In the provincial jurisdiction, regulatory legislation dealing with films and videotapes, human rights legislation and some municipal bylaws regulating display, zoning and advertisement are relevant. The reason we have so many laws dealing with obscenity is that laws have different functions and that there is a constitutional division of power which

organizes law-making jurisdiction. For example, the criminal law is prohibitory in nature and therefore addresses conduct considered to be so serious that the state must interfere to a maximum extent to punish and deter. The power to legislate in criminal matters resides with the federal government only. Legislation such as the *Broadcasting Act* also falls within the federal jurisdiction over interprovincial communications, but is primarily regulatory in nature, often putting the onus on the individual for self-regulation in return for the privilege of obtaining a licence to broadcast. Human rights legislation is declaratory of policy ideals. It provides remedies to individuals when their rights have been infringed. Provincial governments have the power to legislate minimum standards of fair conduct between individuals in the private sector, whereas the *Charter of Rights and Freedoms* entrenches the rights of both individuals and groups, protecting them from unreasonable infringement by governments. The *Charter* is a constitutional document and can override any legislation in conflict with it. The *Charter* binds all levels of governments in Canada and deals with obscenity in more general terms of freedom of expression and equality. Each piece of federal legislation is examined, and examples of provincial legislation are analyzed in the terms described earlier.

It is evident that there is very little philosophical or moral consistency in existing legislation. Different values are protected in different pieces of legislation. In practical terms, the result is confusion and unequal and capricious enforcement of the law.

The Definition of Obscenity in Criminal Code Provisions

Criminal legislation prohibiting certain forms of sexual expression was passed for the first time in Canada in 1892 (S.C. 1892, c.29, s.179). The relevant section in the *Criminal Code* simply stated it was a crime to knowingly and without lawful excuse publicly sell obscene material or expose obscene material for public sale or to public view. No definition of obscene material was provided in the legislation. When cases were brought before the courts, judges adopted a definition from English jurisprudence which said a publication was obscene when:

the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to immoral influences, and into whose hands a publication of this sort may fall (*R. v. Hicklin* (1868), 3 Q.B.D. 360).

The policy underlying the definition was paternalistic and moralistic. The fundamental assumption is that individuals required something more than their own discretion to be protected from immoral and, therefore, harmful influences. The courts assumed that something found to be obscene must of necessity deprave and corrupt the people who read it.¹⁴ The theme of protection coincides with the conservative argument that "permissiveness" *per se* produces a climate of moral laxity which in turn affects social responsibility. The protection afforded by the law was directed at viewers or readers of obscene depictions. Protection or concern for the participant, or the class of participant, in the depiction was not evident. This definition remained the law in Canada until 1957 when Parliament amended the *Criminal Code* to precisely define "obscenity." The new definition says obscenity is:

... any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely

crime, horror, cruelty and violence, shall be deemed to be obscene (S.C. 1959, C. 41, s. 159(8)).

This definition still exists and generally provides the standard for all criminal offences dealing with obscenity.¹⁵ The words presuppose a general standard of acceptability and suggest that legally obscene material deviates from an acceptable norm. The definition is criticized by both liberals and feminists.

Liberals object to the wording of s. 159(8) on the ground that the definition is too vague and potentially reaches too far into matters of privacy and free speech. They would protect exploiters and detractors of women in support of individual freedoms even if the exploitation is "undue," as long as there is no direct harm to an individual.

By prohibiting the "undue exploitation of sex," the section implicitly condones the "due" exploitation of sex. Since women are in almost all cases the subject matter of depictions of sexual exploitation for the entertainment of men, the legislation effectively legitimizes the devaluation of women as human beings. The grammatical construction of the section also leads to the conclusion that the "due" exploitation of sex, even if it is combined with crime, horror, cruelty and violence, is normal and acceptable. This endorsement of sexist values and violence is unacceptable to feminists.

The plain meaning of the words of the section most closely correlate with the moral values of the conservatives. The cornerstone of the new definition, "undue exploitation of sex" replaced the old paternalistic policy of protecting vulnerable individuals from corruption and depravity. The emphasis on preservation of a common sexual ethic is evident in the *Criminal Code's* categorization of obscenity offences as "offences against morals." The etymology of the word "obscenity" itself reflects conservative norms. Its origin and meaning address only offensiveness and sexual arousal rather than the commoditization and exploitation of women for the sexual pleasure of men.

Obscenity Offences in the Criminal Code

Obscenity offences created by s. 159 are making, printing, publishing, distributing or circulating obscene material. Selling and exposing obscene material to public view are also offences. The offences themselves are clear examples of conservative morality. They state:

(2) Every one commits an offence who knowingly, without lawful justification or excuse,

...

(b) publicly exhibits a disgusting object or an indecent show,

(c) offers to sell, advertises, publishes an advertisement of, or has for sale or disposal any means, instruction, medicine, drug or article intended or represented as a method of causing *abortion* or miscarriage, or

- (d) advertises or publishes an advertisement of any means, instructions, medicine, drugs or article intended or represented as a method for restoring sexual virility or curing venereal diseases or diseases of the generative organs.

The repression of information regarding abortion is in accordance with conservative beliefs that all non-procreative sex is immoral and that women should not have the right to self-determination in decisions regarding their maternity. It is worthy of note that until 1969 it was a criminal offence under this section to advertise birth control devices. Feminists strongly question the propriety of using the *Criminal Code* as a vehicle to control women's actual or potential maternity. Any state control in this area constitutes an unwarranted infringement on the right to self-determination.

The Customs Act

Customs legislation (*Customs Act*, R.S.C. 1970, c. 58; *Customs Tariff*, R.S.C. 1970, c. 60), which regulates all goods entering Canada, specifically addresses sexual expression. Until very recently, the words used to describe prohibited material for purposes of importation were different from those used in the *Criminal Code* for purposes of criminal prosecution. The Customs Tariff, for over 100 years, used the undefined words, "immoral and indecent" (Tariff Item 99201-1) to describe material which would be prohibited entry into Canada. To give the words some meaning, policy guidelines were developed by the Federal Customs and Immigration Department. The policy guidelines are:

9.(1) In its formulation of the policy governing the administration of this item the Department is guided by the decisions handed down by the Canadian Courts and by the definition of obscenity contained in Section 159(8) of the *Criminal Code* . . . :

(2) For the purpose of assisting field officers in making judgments, the following guidelines are to be followed:

The following material will be dealt with at field level for initial classification and will be prohibited:

- (i) illustrated material containing hard-core pornographic pictures which lewdly and explicitly display the male and female sexual organs, sexual intercourse, sexual perversions and such acts, including bestiality.
- (ii) Reading material, containing explicit hard-core fictional text dedicated entirely to sexual exploitation and containing no redeeming features. The primary source of materials of this character is the paperback, or so-called "pocket" publications.

The following material will be referred to headquarters for initial classification:

- (iii) That type of material, the so-called "grey area" with illustrations depicting similar subjects to those described in 9(2)(i) but in a less explicit fashion, with emphasis, however, mainly on sexual activities and apparently designed to appeal in the same way as hard-core pornography. In

this category are the pseudo or so-called "Nudist" and "Film" magazines which make pretensions to being bona fide but which include lewd or other pornographic displays.

(iv) Any publication which despite its format or alleged scientific, medical or artistic purpose appears to be in essence an indecent or immoral publication in disguise

(vii) Any publication which appears to advocate, promote or incite hatred against any identifiable group, that is, by colour, race, religion or ethnic origin.

(viii) Any publication concerned with violence which counsels, appears to incite, advises, recommends or persuades persons to commit acts of violence which are prohibited by the *Criminal Code*.

These policy guidelines are vague. No specific mention of child sexual abuse in pornographic depictions is made nor is there any specific mention of sexual violence against, or degradation of, women. The hate literature guidelines are very similar to prohibitions regarding hate literature in the *Criminal Code*. Both omit gender as a target category for hatred. No attempt is made in the guidelines to require analysis of material within the social context in which it is presented. The prime concern of customs officials appears to be depictions of explicit sex, and this concern is based on a conservative moralist view.

The Fraser Committee found that customs officers do not apply the policy guidelines in a uniform manner and the information exchange between regions about importations is slow, inefficient and inexact (Fraser Committee Report 1985, I: 150-51). Thus, many liberal concerns that the restraint of material prior to distribution is inconsistent, unreliable and arbitrary may be valid.

The Customs legislation was recently struck down by the Federal Court of Appeal for reason of vagueness (*Luscher v. Dep. M.N.R. (Customs and Excise)*, [1985] C.T.C. 246, 57 N.R. 386) and has since been amended by removing the words "indecent and immoral" and replacing them with the *Criminal Code* definition of obscenity. Although the words are now somewhat more precise, the moralist values incorporated in the *Criminal Code* will now form the basis for decision-making at the importation stage.

The Canada Post Corporation Act

This Act (*Canada Post Corporation Act*, S.C. 1980-81-82-83, C.54) is closely tied to the *Criminal Code*. Section 164 of the *Criminal Code* actually prohibits the use of the mails to distribute obscene matter. It states:

Everyone commits an offence who makes use of the mails for the purpose of transmitting or delivering anything that is obscene, indecent, immoral or scurrilous.

The words "indecent, immoral, and scurrilous" do not seem to mean anything different than the word "obscene" and are defined by the community standards test (*R. v. Popert* [1981], 58 C.C.C. (2d) 505 [Ont. C.A.]). The Fraser Committee concluded

that, in spite of this legislated power, the Post Office neither investigates nor initiates any action to control distribution of pornography through the mails. The Committee also concluded that no effective coordination exists between the Post Office and law enforcement officials to control distribution in spite of the significant overlap of jurisdiction created by the *Criminal Code* and the *Canada Post Corporation Act* (Fraser Committee Report 1985, 171).

The Canadian Broadcasting Act and the CRTC

The *Broadcasting Act* (S.C. 1967-68, c. 25, s. 1) and its regulations cover communications over AM and FM radio, television and cable or pay television. They also set out a broadcasting policy for Canada in s. 3, paragraph (c) of the Act. It states that freedom of expression in broadcasts is subject to other laws such as the *Criminal Code*, thereby importing the policies of the *Criminal Code* into the *Broadcasting Act*. But this legislation contains a significantly different policy emphasis. The relevant section states in part:

3. (c) all persons licensed to carry on broadcasting undertakings have a responsibility for programs they broadcast, but the right of freedom of expression and the right of persons to receive programs, subject only to generally applicable statutes and regulations, is unquestioned;

By specifically emphasizing freedom of expression, Parliament adopted the liberal view as the most valued priority of the legislation. Section 3 clearly establishes that the *Broadcasting Act* gives the power and responsibility of program content to licensees. The Act authorizes the Canadian Radio-Television and Telecommunications Commission to regulate and supervise all aspects of the Canadian broadcasting system (Section 15), but it is clear from the legislation that the Commission cannot perform a censorship role.¹⁶ There is no provision in the Act for any prior review of programming. The power of the Commission to shape programme content resides in its responsibility to pass regulations under the Act. Regulations may require and revise licensing conditions and allow the Commission to review the performance of licensees on application for licence renewal. The CRTC cannot, however, make compliance with the Act or programme standards a condition of obtaining or keeping a licence (Fraser Committee Report 1985, 178). With the advent of pay television, and the expressed desire of licensees to feature explicit sexual material as part of their programming, women's groups in Canada mounted an extensive lobby to have Parliament amend the *Broadcasting Act* to reflect their concerns. As a result of intensive negotiations between interested groups and the government, Bill C-20, an Act to amend the present legislation governing communication, was introduced in Parliament. It would enable the CRTC to make standard of programming a condition of licence upon application for renewal:

- c.l. the programming provided by the Canadian broadcasting system should respect and promote the equality and dignity of all individuals, groups or classes of individuals regardless of . . . sex.

When the Minister of Communications introduced the Bill in the House of Commons, he stated:

Part II of the Bill provides for a new policy objective that will become part of section 3 of the *Broadcast Act*. This objective concerns programming of an abusive nature, and its purpose is to define the CRTC's responsibility in this respect (Masse 1985, 1848).

This amendment is not yet law but has received second reading. (Bill C-20 died on the Order Paper, Summer 1986. Ed. note.) The requirement that the Canadian broadcasting system "promote equality and dignity" is clearly representative of a new egalitarian sensitivity in Parliament, as it is a concept enshrined by the *Charter of Rights* and vigilantly promoted by women.

In 1984, the CRTC, in response to the same lobbying efforts, also amended the Broadcasting Regulations affecting radio, television and pay television. The radio regulations now state that it is prohibited to broadcast:

any abusive comment, which, when taken in context, tends or is likely to expose an individual or a group or class of individuals to hatred or contempt on the basis of race, national or ethnic origin, colour, religion . . . sex, age, or mental or physical disability.¹⁷

The regulations for conventional television have the same prohibitions but add the prohibition of "... abusive pictorial representation" (S.O.R./84-788). The prior regulations merely prohibited abusive comments or pictorial representations on any race, religion or creed (C.R.C., Vol. IV, c. 379, at 2559 (Regulation 5) and C.R.C., Vol IV, c. 380, at 2582 (Regulation 6); C.R.C., Vol. IV, c. 381, at 2606).

In addition to the new regulations which clearly reflect egalitarian values, radio and conventional television are still governed by other regulations which reflect the conservative moral ethic. As well as being prohibited from broadcasting "anything contrary to law" (S. 5(1)(a) and 6(1)(a)), licensees may not broadcast any obscene, indecent or profane language or pictorial representation (S. 5(1)(e) and 6(1)(c)), or any programme on the subject of birth control or venereal diseases unless it is presented in a manner appropriate to the medium of broadcasting (S. 5(1)(f), s. 6(1)(d), 6(1)(f)). The result is a combination of egalitarian and conservative justifications for curtailing expression.

The amendments to the pay television regulations, on the other hand, drop the "anything contrary to law" and obscenity limitations. The regulations regarding abusive comment are the same as for radio and conventional television but, instead of the regulation regarding obscenity and indecency, the CRTC enacted a regulation which added "sex" as a protected category in s. 6 which prohibits "any abusive comment or abusive pictorial representation which when taken in context, tends to or is likely to expose an individual or a group or class of individual to hatred or contempt . . ."

The regulations also require suitable warnings in respect of programmes unsuitable for children (Regulation 7 S.O.R./84-797):

7. Where a program to be distributed by a licensee is not suitable for an audience other than an adult audience by reason of its subject matter or treatment thereof, or any characteristic thereof, including its depiction of violence,

nudity or explicit sexual conduct, or by reason of coarse language or other content likely to be offensive to some viewers, the licensee shall so advise by providing an appropriate indication thereof at the beginning, and in all promotion of the programming.

In effect, this regulation permits pay television programming to include violence, nudity, explicit sexual conduct and coarse language as long as warnings are given. It is clear from this legislation that the strict controls on radio and conventional television do not apply to pay television. By dropping the "anything contrary to law" limitation, the regulations effectively permit the broadcast of illegal material on pay television, putting the onus on the Crown to bring a prosecution under criminal legislation. It is difficult to imagine how the Commission will ensure the promotion of equality and dignity in the system, required under Bill C-20, when the kind of representations described above are permissible. That fact that the CRTC is not prepared to do more than require pay TV licensees to follow self-imposed guidelines makes it doubtful that protection of feminist egalitarian values is afforded in the pay television regulations.

The underlying policy appears to be that, where viewers are subscribers who choose to purchase a communications service, there should be a greater reluctance to infringe on individual freedom than in the situation where viewers receive communications through the public air waves. The policy is often justified by the argument that if a viewer finds a programme to be offensive or indecent, she or he can simply turn it off. To say that one may avoid further offence by turning off the channel is like saying the remedy for an assault is to run away after the first blow (See *F.C.C. v. Pacifica*, 438 U.S. 776 [1978]). The policy ignores several things. First, it ignores the fact that the broadcast media is uniquely accessible to children, who in many cases are unsupervised; second, television sets are in the homes, a place where privacy should be especially respected; third, unconsenting adults may tune in a channel without having read the warning that offensive material is being shown; fourth, the scarcity of pay television channels requires greater attention to the public interest when licences are issued.

Film Classification and Censorship

Provincial film boards derive their powers from provincial law because the constitutional division of powers gives provinces control over cultural affairs. In most jurisdictions in Canada, provincial censor boards have the power to classify films according to content and to cut or censor films for public viewing in commercial theatres. In Quebec and Manitoba, there is no power to censor or cut films. In Ontario and Nova Scotia, the Censor Board has the additional power to classify, censor or cut videotapes for private use. Provincial film boards generally base their decisions on informal criteria, developed internally.

In Alberta, the legislation establishing the film board is the *Amusements Act* and permits the regulation of publicly-shown films (R.S.A., 1980 c. A-41; Alta. Reg. 72/57, as amended by Alta. Reg. 261/82; Alta. Reg. 8/83). Unlike Ontario and Nova Scotia, the Alberta government has not expanded the jurisdiction of its board to regulate videotape materials for private use. Consequently, no age, advertising

or classification requirements control the rental or sale of video tapes, although it has been proven that hundreds of videotapes circulating in the Alberta market are sexually violent, degrading, or encourage incest (for example, see *R. v. Wagner*, [Alta. Q.B.]).

The stated policy of the Alberta Censor Board is "to maximize the number of film choices and, with the provision of fair warnings, to allow the parent and film goer to exercise individual discretion and responsibility in the selection of films" (Letter from Bill Payne, Minister Without Portfolio, 28 February 1985). For that reason, the Alberta Censor Board avoids exercising its power to censor or cut films and in practice appears to favour the liberal approach.

Alberta's system of classification is similar to that in other provinces. In the Regulations under the *Amusements Act*, four categories of film classification are available to the Censor Board: general, parental guidance, mature and restricted adult (Alta. Reg. 72/57, s. 19[1]). The Board may require that theatre operators provide additional information in the advertising of a film so that the public can make informed choices (S.19(2) - (6)). Internal guidelines developed by the Board are published in a brochure, "Alberta Film Classification" and are not legislated as regulations. The Board considers each film individually and as a whole, rather than isolated portions taken out of context. The policy of the Board is not to approve graphic or prolonged scenes of violence, torture, cruelty, horror or human degradation; explicit depiction of sexual activity or indignities to the human body; bestiality; or the depiction of children involved in sexual activity (Letter from Bill Payne, Minister Without Portfolio, 28 February 1985). Yet in practice, films containing this type of content have been approved for showing in Alberta.¹⁸

Municipal Legislation

Municipalities derive their power to regulate and control a wide range of activities from provincial legislation. In Alberta, the power of municipalities to license and regulate businesses and to zone land use within their jurisdiction is found in the *Municipal Act* (R.S.A. 1980, c. M-26). Municipalities also have the power to control nuisances and public places within their jurisdiction. Some municipalities in Canada have legislated bylaws to control the display of pornography or to restrict the sale of pornography to adults only.¹⁹ Others have attempted to use zoning bylaws to prevent pornography shops from locating in the city.²⁰ The rationale underlying these bylaws is that involuntary exposure to offensive material is a violation of human rights and exposure of children to violent and abusive sexual depictions is contrary to their best interests and to the rights of parents to educate their children. Laws precluding public display of pornography protect people from involuntary exposure while interfering to a minimum with freedom of expression. Material controlled by display laws is still available for private viewing, satisfying liberal goals.

Feminists are in favour of display regulations because public display of pornography abuses women's right to privacy, their right to equal dignity with men and their right not to be forcibly immersed in demeaning depictions which are frivolously and flagrantly displayed (Brownmiller 1980, 254). Conservative moralists argue for

display laws for the reason that publicly displayed sexual depictions offend the sense of propriety and decency of the majority of the community and erode the moral values of society (for a discussion of conservative morality, see Fraser Committee Report (1985), 17-18). Liberals do not object to this form of regulation because display bylaws maximize freedom for the largest number of people (Law Reform Commission of Canada 1975).

Human Rights Legislation

Canadian human rights legislation embodies markedly different policies than criminal legislation because its purpose is to prohibit discrimination and educate the public rather than to punish and deter. Provincial and federal legislators have attempted to deal with pornography as an equality issue in human rights legislation. Human rights jurisprudence indicates that government infringement on individual liberties is considered justifiable on the grounds of discrimination, rather than on the grounds of morality, direct harm, or paternalism. For example, s. 2 of Alberta's *Individual Rights Protection Act* states:

2(1) No person shall publish or display before the public or cause to be published or displayed before the public any notice, sign, symbol, emblem or other representation indicating discrimination or an intention to discriminate against any person or class of persons for any purpose because of the . . . sex of that person or class of persons.

(2) Nothing in this section shall be deemed to interfere with the free expression of opinion in any subject (S.A. 1972, c. 2, s. 28; 1985, c. 27, s. 17).

The Alberta Human Rights Commission has interpreted this section as applicable to uncovered displays of pornography in retail outlets. The *Saskatchewan Human Rights Code* (R.S.S. 1978, c. S-24.1 as amended) goes further than the Alberta statute by, in addition to discrimination, addressing material which exposes individuals or classes of individuals to hatred and ridicule or affronts their dignity. Section 14(1) states:

14(1) No person shall publish or display or cause or permit to be published or displayed, on any lands or premises or in a newspaper, through a television or radio broadcasting station or any other broadcasting device or in any printed matter or publication or by means of any other medium that he owns, controls, distributes or sells, any notice, sign, symbol, emblem or other representation tending or likely to tend to deprive, abridge or otherwise restrict the enjoyment by any person or class of persons of any right to which he is or they are entitled under the law, or which exposes, or tends to expose, to hatred, ridicules, belittles, or otherwise affronts the dignity of any person, any class of persons or a group of persons because of his or their . . . sex.

Rather than protecting morals, the Code's objective is clearly to promote equality and fairness.

Other human rights codes address the issue of hate literature more narrowly. Section 2 of the *Manitoba Human Rights Act* (S.M. 1974, c. 65) states:

(1) No person shall

- (a) publish, display, transmit or broadcast, or cause to be published, displayed, transmitted or broadcast; or
- (b) permit to be published, displayed, broadcast or transmitted to the public, on lands or premises, in a newspaper, through television or radio or telephone, or by means of any other medium which he owns or controls;

any notice sign, symbol, emblem or other representation

- (c) indicating discrimination or intention to discriminate against a person; or
- (d) exposing or tending to expose a person to hatred;

because of the . . . sex . . . of that person.

These human rights statutes include "sex" as a category of protection from hate propaganda. The *Criminal Code*, on the other hand, protects only those who are members of groups distinguishable by colour, race, religion or ethnic origin. This discrepancy in protection is probably due in part to the fact that the Special Committee on Hate Propaganda, which recommended the legislation to Parliament, was created in response to representations from specific minority groups vulnerable to Nazi-type propaganda. The Committee conducted its investigations and reported to Parliament in 1965. It is evident from their report that pornography as a form of hate propaganda was never considered.

Feminist literature analyzing pornography as a form of hate literature began to appear in the early and middle 1970s, about the time that the content of popular men's magazines shifted from photos of nude women to depictions of nude women combined with violent and degrading acts. The feminist analysis of pornography as hate literature becomes very persuasive when it is examined in light of the stated rationale for controls in the Hate Propaganda Committee's report:

This Report is a study in the power of words to maim, and what it is that a civilized society can do about it. Not every abuse of human communication can or should be controlled by law or custom. But every society from time to time draws lines at the point where the intolerable and the impermissible coincide. In a free society such as our own, where the privilege of speech can induce ideas that may change the very order itself, there is a bias weighted heavily in favour of the maximum of rhetoric whatever the cost and consequences. But that bias stops this side of injury to the community itself and to individual members or identifiable groups innocently caught in verbal cross-fire that goes beyond legitimate debate.

An effort is made here to re-examine, therefore, the parameters of permissible argument in a world more easily persuaded than before because the means of transmission are so persuasive. But ours is also a world aware of the perils of falsehood disguised as fact and of conspirators eroding the community's integrity through pretending that conspiracies from elsewhere now justify verbal assaults — the non-facts and the non-truths of prejudice and

slander. Hate is as old as man and doubtless as durable. This Report explores what it is that a community can do to lessen some of man's intolerance and to proscribe its gross exploitation (Report of the Special Committee on Hate Propaganda in Canada 1966).

It is interesting to note that much more recent government committees considering hate propaganda laws failed to identify pornography as a form of hatred against women even though an abundance of scholarly work on the subject and of pornography fitting the above description was available to them (e.g. Lawlor 1984; Special Parliamentary Committee on Participation of Visible Minorities in Canadian Society 1984). It was not until the Fraser Committee Report on Pornography and Prostitution (1985, 317-25) that an investigative Committee of Parliament made the connection between violent, degrading pornography and hate literature.

To continue to exclude gender in *Criminal Code* hate propaganda provisions only creates contradictory policies on the protection of minority groups. At present, the policies underlying federal human rights legislation, the *Broadcasting Act* and regulations, the *Saskatchewan Human Rights Code* and the *Manitoba Human Rights Act* stand in sharp contrast to the obscenity and hate provisions of the *Criminal Code*, which, by implication, deny that pornography can be a form of hate propaganda (see s. 281.1(4)).

The obscenity provisions seem to be particularly inappropriate to deal with pornography if one accepts that pornography's intent is to convey false messages about female sexuality and to engender hatred. The conservative values underlying the obscenity provisions which strive to protect marriage and the family from immoral influences have little in common with policies of equal treatment of the sexes.

Charter of Rights and Freedoms

The *Charter of Rights and Freedoms* has put the obscenity debate in sharper focus than ever before in Canadian legal history. The most important sections of the *Charter* in this regard are sections 1, 2, 15 and 28:

- s. 1 The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
- s. 2 Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.
- s. 15(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, religion, sex, age or mental or physical disability.

s. 28 Notwithstanding anything in this Charter, the right and freedoms referred to in it are guaranteed equally to male and female persons.

The Charter applies to both federal and provincial governments. It also applies to municipal governments through the power they receive from provincial governments. The Charter can render any legislation in conflict with its provisions of no force and effect.

Sections 1, 15 and 28 clearly indicate that individual rights cannot be supported absolutely. The general welfare of the community must be considered, particularly the interests of minority groups identified in s. 15(1). Section 1 of the Charter indicates that the presumption of individual freedom can be rebutted by showing that its exercise will imperil vital community interests. The onus is clearly placed on the state to show that laws limiting exercise of fundamental rights and freedoms must be reasonable, must be clearly set out in the law, and must be justifiable in the context of freedom and democracy. If the state is unable to meet these tests, the infringing legislation cannot stand.

In the obscenity debate, the fundamental Charter issue is whether laws controlling obscenity are legitimate infringements on freedom of expression. This challenge can be made to any of the federal, provincial or municipal laws controlling obscenity.

The entrenchment of sections 15 and 28 indicates that Canadian society now accepts the equal treatment of women in all aspects of life. The sections are premised on the idea that all Canadians are of equal dignity and worth. Depictions in pornography which lower the status of women in graphic terms strike at the heart of these newly-entrenched values. The Charter has thus provided the impetus for a major shift in traditional thinking about criminal obscenity laws. Mere sexual impropriety can no longer be sufficient rationale to justify legislation in this area. The new focus on human dignity and equality will require courts to examine the effects of pornography on women's rights, as the feminist analysis has suggested. The "harm" which now must be considered as a justification for controls on pornography is the harm to the guarantee of equality in the Charter. Furthermore, it can be argued that the combined effect of sections 15 and 28 gives broader scope to protection of legal and political rights for women than for other minority group interests.

CONCLUSION

Canada has had 158 years of case law and 93 years of legislation dealing with obscenity. Only in the last three years has a serious reappraisal begun of basic assumptions which have guided our thinking up to this time. The *Charter of Rights and Freedoms*, by entrenching the equality of men and women before and under the law and their equal protection and equal benefit of the law, has provided an entirely new focus. The legislative purpose of obscenity laws, and other laws addressing moral values, should be reexamined in light of our commitment to equality in the Charter. If the purpose of these laws was to promote and protect equality between men and women, much of the confusion and contradiction in the present law would disappear.

A number of laws have been altered in recent years because law makers are beginning to realize that the law has not fairly recognized women's interests. Obscenity laws must also change because they are outdated, unacceptable and inconsistent. Governments should not wait for challenged legislation to make the long expensive journey through the courts before they act. Legislation should be brought into line and made consistent with the equality entrenched by the *Charter*.

Those who would reform obscenity laws are of the opinion that a consistent value must be expressed and applied to bring any consistency and clarity to the law. The Fraser Committee on Pornography and Prostitution identified equality as the fundamental focus for change:

With respect to pornography, the emphasis on equality will, we believe, require a shift from the traditional focus on sexual immorality as a basis of criminal prohibitions against pornography. We believe that the development of theory which views pornography as an assault on human rights, will have to be integrated into the conceptual framework of the criminal law on pornography.

In making choices between competing interests, legislators should take into account moral conflict in its human context. This value could lead to a changed understanding of human development and a more generalized view of human life.

NOTES

1. "Sex radicalism" includes birth control, free love, companionate marriage, easy divorce and legitimization according to Ernst and Segal (1928), cited in MacMillan, *Censorship and Public Morality* (1983).

2. It has been previously argued, however, that Mill, if he was living today, would interpret his words so as to include the requirements of social justice.

3. It is interesting that the proponents of the clear and present danger test for obscenity rely so heavily on Mill's reasoning to justify their stand, when Mill's sequel to "On Liberty" was an eloquent protest against the subjection of women's freedoms to irrational limitations. ("Subjection of Women" 1869). Social scientific studies indicate that pornography perpetuates those irrational limitations.

4. For a discussion on a variety of views on censorship held by pressure groups, lawyers, judges and Parliament and on the social background that moulded the formation of these opinions, see Davies (1978).

5. See Gilligan (1982). See also Freud "Three Essays on the Theory of Sexuality" ([1905] 1961).

6. It was only in 1928 that women became legal persons in Canada. See "Persons" Reference re Meaning of Word in s. 24 of the B.N.A. Act, [1929] S.C.R. 276.

7. For example, see Steinem (1980, 37); Bart and Joza (1980, 204, 207); Lewis (1978, 4); Canadian Advisory Council on the Status of Women (1984).

8. For a discussion of value reciprocity, see Henle (1980).

9. However, egalitarians point to some direct harms to participants as justification for curtailing expression. (See Lederer 1980; Russell 1980).

10. See Clark and Lewis (1977). They state that the crime of rape between 1961 and 1971 increased by 174 per cent. In the period 1969-1973 it increased 76 per cent.

11. MacLeod (1980), says one woman in 10 in Canada is beaten by her husband or common-law mate.

12. Report of the Committee on Sexual Offences Against Children and Youths (1984) states, among other staggering statistics of abuse, that 50 per cent of women and 30 per cent of men have been victims of unwanted sexual acts — the majority occurring before they were legal adults.

13. This point is made in the ACTRA Policy Statement on Censorship and Pornography (1984, 14-16). The paper states:

... members who refuse to participate in such productions [of material which is sexually violent and indicates harm to other people] find that the small amount of work available becomes smaller.

The Submission on Pornography and Censorship from the National Committee on Women's Issues to the ACTRA Board of Directors makes the point more clearly.

Canada, unlike America, is the only country we know of where the pornography industry and the mainstream film industry are inextricably combined. Opportunities in the film industry here mean work in the porn industry The combination of these two industries in Canada seriously limits the artistic development of writers and performers, in that porn production insists on formula films, i.e., "T. & A., Chop'em Ups," etc. The porn and mainstream cross-over seriously bleeds legitimate films of funds they need to be made, and lowers the general quality of all film."

14. The "deprave and corrupt" theory is interpreted in *D.P.P. v. Whyte* (1972), 3 W.L.R. 410. In *R v. American News* (1957), 118 C.C.C. 152 (Ont. C.A.). It was made clear in Canada that this assumption could not be challenged by expert testimony.

15. Wherever the word "obscenity" in the *Criminal Code*, it was covered by this section; however, other words such as "scurrilous," "disgusting," "immoral" and "indecent" are also used. Cases indicate that the obscenity definition is used when these words are interpreted.

16. This policy is verified in the decision in *National Indian Brotherhood v. Juneau* (1971), F.C.R. 498, at 513.

17. Radio (AM) Broadcasting Regulations, C.R.C. 1978, c. 379, s. 5(1)(b), Canada Gazette V. 119, No. 8, (April 17, 1985); Radio (FM) Broadcasting Regulations, C.R.C. 1978, c. 380, s. 6(a)(b), Canada Gazette V. 119, No. 8 (April 17, 1985).

18. For example, see Shannon, J.'s discussion of "The Story of O" in *R. v. Wagner*.

19. For example, see the City of North York, Bylaw 27901; City of Hull, Bylaw 1737; City of Lachine, Bylaw 2333; City of Mount Royal, Bylaw 1153; City of Pointe Claire, Bylaw 2228; Vancouver, Bylaw 1984.

20. The City of Vancouver did this, but in the case of *Red Hot Video v. The City of Vancouver*, the Court of Appeal struck down the bylaw for reasons of vagueness.

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SEVEN

PROSTITUTION IN CANADA

John P.S. McLaren

PROSTITUTION — THE SOCIAL PHENOMENON

The Historical Record

Until recently prostitution as a social phenomenon has excited little official or scholarly interest in Canada. We now know something of its incidence in the frontier communities of the West through the writing of James Gray (1971), and elsewhere through the work of social historians on particular communities (Bedford 1981; Rotenberg 1974; Nilson 1980; Langdon 1986). However, unlike other forms of moral deviance, such as drunkenness and drug use and trafficking, it seems to have largely eluded study by government.¹

The growth of interest in feminist history, and the research commissioned by the Special Committee on Pornography and Prostitution (the Fraser Committee) have begun to fill in some of the gaps. The work of Professor Connie Backhouse on prostitution and the law in nineteenth century Ontario (1984) has provided us with valuable insights into the incidence of prostitution and the attitude of the legal establishment towards it. Professor Backhouse's research demonstrates the pattern of women, typically from disadvantaged groups, driven by poverty into prostitution, regularly harassed by the police and convicted by the courts under a totally discriminatory body of law. This pattern, documented in studies from Britain and the United States, was fully replicated here (Connelly 1980; Walkowitz 1980; Rosen 1982). She has also suggested (1984) that none of the legal expedients to stamp out or control prostitution, namely criminal proscription, regulation and moral

rehabilitation, worked because they reflected attitudes which smacked of class, race and sex discrimination.

Although the picture of the West painted by James Gray suggests that there were periods of lax enforcement when the police, left to their own devices, devoted themselves to more important priorities, it is clear that these were interspersed with periods of repression, as moral pressure was brought to bear by church and community leaders. As a result, there were often wild fluctuations in the enforcement statistics (Thorner and Watson 1979, 219).

Present Realities

The Limitations of the Research

The absence of serious research into prostitution as a social phenomenon has meant that the response of the community has been based on skeletal knowledge, and not a little moral fervour.

The Fraser Committee, as part of its examination of prostitution within Canada, decided very early in its discussions that it was important to develop as clear a picture as possible of prostitution as a present social fact. Consequently, the Department of Justice commissioned five regional studies of prostitution, covering the Maritimes, Quebec, Ontario, the Prairies and British Columbia (Crook 1984; Fleischman 1984; Gemme et al. 1984; Lauth 1984; Lowman 1984). These studies provided the first nationwide body of data on the problem. This body of research was complemented by a national population survey of 2018 adults, conducted during the summer of 1984, which assessed the opinions of Canadians on prostitution as a social and legal issue (Peat, Marwick and Partners 1984).

The data from the research studies and the survey, together with the results of the research on child prostitution conducted by the Badgley Committee, provide us with a somewhat clearer picture of the social reality of, and attitudes towards, prostitution. It is important to recognize, however, the limitations of the work so far. The time limit for the Fraser Committee's research meant that only the larger cities and the most visible players, the street prostitutes, came clearly into focus. We still know far too little about prostitution in smaller centres and rural areas or about prostitutes who work off the streets, in bars, hotels, escort services, massage parlours and their own residences. Moreover, the character and motivations of the male principles, the customers and pimps, are still shrouded in mystery. Obviously, much more research needs to be done. What can we glean from the most recent research?

The Incidence of Prostitution

It can be asserted with confidence that prostitution is an identifiable activity in all mid-sized and large cities in Canada. Beyond that, it is difficult to be certain. Clearly street prostitution is rare or unknown in small towns and villages, and rural areas. However, that in itself does not prove the absence of prostitution, for there may well be liaisons taking place behind closed doors in those communities.

Estimating the number of prostitutes at work at any one time in a particular community is also difficult. In addition to the "hidden phalanxes," seasonal fluctuations occur, and turnover is high. Moreover, it is impossible to establish a breakdown between the full-time and part-time operators. In large cities, such as Montreal, Toronto and Vancouver, the number of active street prostitutes can vary between 50 and 500 depending upon the weather, economic conditions, patterns of police enforcement and the shifting full-time/part-time ratio. Based on the observations of the police and social workers, it is safe to assert that the number of prostitutes working the streets has increased in most large cities in recent years. What is not so clear is whether that reflects an overall increase in every form of prostitution. Certainly there is an impression, based on the proliferation of advertisements for escort and dating services, that "off street" business has been flourishing.

It is clear that the incidence of different types of prostitution varies between cities. While street prostitution is far more evident in the large cities — Montreal, Toronto, Vancouver, Winnipeg, Edmonton, Calgary and Ottawa — off-street prostitution seems to account for the major part of the activity in medium-sized cities, such as Fredericton, Saint John and London, Ontario. Special circumstances, such as cross-border traffic, may alter this pattern. So it is that street prostitution predominates in Niagara Falls, a medium-sized community.

A Profile of the Prostitutes

Prostitution is predominantly a female occupation, although there has been an increase in male homosexual prostitution in recent decades. The overall ratio of female to male appears to be in the order of four to one, with the proportion varying from city to city. The majority of street prostitutes are in the 18 to 24 age group. Both the Badgley Report and the research done for the Fraser Committee reveal the presence of juvenile prostitutes in a number of the larger cities. Moreover, a significant number of adult prostitutes claim to have started in the business in their teens, typically at 15 or 16. Such information as we have suggests that those prostitutes who work off the streets are older, and that juvenile prostitution is rare in that setting, because of the scrutiny of employers, or bar or hotel staff who wish to avoid legal problems.

The career span varies between males and females, with the former quitting in their early twenties in the face of younger competition, and some of the latter carrying on into their late twenties and early thirties, although often in less salubrious locales.

The research suggests that while prostitutes come from a variety of social and economic backgrounds, a majority come from families marked by tension or actual breakdown, and of slender financial means. The research data from Ontario suggests that those who work off the street, and especially the call girls, may come from more affluent environments.

Data from the United States and submissions to the Fraser Committee suggested that a sizeable proportion of prostitutes have been sexually abused as children, more so than the population at large. Thus far, the Canadian research does not bear out this contrast. The national population survey conducted by the Badgley Committee indicated an alarmingly high incidence of this type of experience in the general

population (Committee on Sexual Offenses Against Children and Youth 1984, 1: 111-288). The comparative figures for prostitutes from research of both committees, indicate that the incidence of child sexual abuse is about the same as for the population at large. However, it is not clear what importance can be attached to this correlation, because of the broad definition of sexual abuse used by Badgley. At the moment we have no way of telling whether there is a difference between the two groups in terms of seriousness of the abuse suffered.

Although male prostitutes are predominantly single, between 20 to 25 per cent of female prostitutes are married or have been, and some of them have children to care for. We have little data on how prostitutes with children cope, although research in the prairie region suggests reliance on other family members.

The majority of prostitutes have criminal records. In Ontario 69 per cent of the prostitutes interviewed had been arrested once; 62 per cent in the Maritimes had a criminal record, and 67 per cent in Vancouver. Although some of these offences were prostitution-related, the majority were not, comprising offences such as assault, theft and drug possession. It seems that the lifestyle of the prostitute and the context for his or her work, particularly the street, create the circumstances in which it is tempting to engage in other forms of criminal behaviour.

It is commonly thought that drug and alcohol dependency is high amongst prostitutes. However, while there are undoubtedly some individuals who support a habit by prostitution, we have no hard data to show that their drug use is greater or more sustained than those in their general age group. The responses of the prostitutes themselves suggest that they use both drugs and alcohol, but rarely to excess, as they appreciate that they have to keep their wits about them.

The Reasons for Prostitution

Most prostitutes cite financial need as the main reason for their being on the streets. The motivations vary, of course, between the juvenile runaway who sees prostitution as a way around a host of educational and identification problems, and the adult who has little or nothing else in the way of employment available. The economic motivation is clearly accentuated by the lack of education of most prostitutes. In the Maritimes research study it was revealed that as many as 84 per cent of street prostitutes had not completed high school. The lowest figure for non-completion of high school was Quebec, with 68 per cent.

Despite the disincentives against leaving the trade, the majority do, in their twenties or earlier. Where they go, and what lives they lead subsequently, is still shrouded in mystery.

The Prostitution Business

The five regional studies uniformly reveal that street prostitution is a dangerous business, particularly as far as the prostitute is concerned. At its best, it is dehumanizing and attended by conflict with customers, pimps or the police. At its worst, it means rape, assault and occasionally death for the prostitute.

Although it is difficult to get data, it was the impression of the Fraser Committee that a majority of prostitutes are independent operators, that is, in business on their

own account. While the degree of organization of prostitution varies from city to city, there is no evidence of the involvement of organized crime in the common sense of that term. Clearly some prostitutes are controlled by pimps, and those who work for escort services and the like have employers, but the organization is typically small scale.

Because of the anonymity of the pimps and the reticence of prostitutes associated with them to admit their existence, it is difficult to ascertain the control they exercise. There are examples of the classic, mean, exploitative pimp who not only takes most, if not all, of what the prostitute earns, but mistreats her into the bargain. In some cities, Halifax being the prime example, such individuals effectively control street prostitution.

Figures from the research studies suggest that between \$200 and \$300 per day is the financial quota set by the pimps for the women they control, with from 50 to 100 per cent of the money turned over to the pimps. Some pimps will run from two to six prostitutes at a time, but this is typically the extent of their "stables".

Along with customers, pimps are the major source of violence against prostitutes. Force is often used to "punish" the prostitute. Physical mistreatment or its threat will also be used to keep the woman within the fold.

It would be wrong to suggest that all the men characterized by the law as pimps, that is, those who live on the avails of prostitution, fall into this group of outright exploiters. There is evidence that some of these relationships are voluntary and supportive, and not viewed by the female partner as exploitative. However, given the broad definition which the law applies, prostitutes are rarely willing to talk about these liaisons.

The proportion of women who are pimped varies from city to city. Montreal and Quebec City seem to have few, while the "on street" business in Halifax and Winnipeg is controlled by them. Where pimps do operate they often come from disadvantaged groups within the community, such as the black population in Halifax and the native population on the Prairies. Because of the clandestine operations of pimps, and the reticence of the prostitutes, the police find the law difficult to enforce. Only where a prostitute has suffered physical violence, and is no longer willing to put up with it, is a complaint likely.

The extent and degree of exploitation in escort services and massage parlours is difficult to define. The police view is often that "organized" crime is involved and that the women are moved around at the whim of the managers. Clearly, some businesses of this type are independent. This is especially true of the escort services run by women. The latter also seem to be run in a less exploitative way, with the prostitutes retaining a larger share of their earnings.

By contrast with female prostitutes, male prostitutes are rarely exploited financially or commercially. Certainly, male street prostitutes are independent operators, which means that they are not subject to financial quotas set by anyone else, and are free to operate in a way which satisfies their own economic needs.

As far as the location of prostitution is concerned, most of the data relates to street prostitution. Normally street prostitution is located in the downtown areas of cities,

typically in commercial or business sectors. These areas are usually close to hotels, bars and restaurants and are the best for making contact with customers, who value the convenience of mobile "pick ups" and the anonymity which comes with being removed from their home neighbourhoods.

In Vancouver, and to a lesser extent Toronto and Halifax, problems have arisen because street prostitution has intruded into downtown residential areas, or upgraded residential accommodation has attracted new dwellers to areas traditionally occupied by prostitutes. Predictably, the spillover of street prostitution into residential areas has produced considerable tension between the prostitutes and residents. Traffic has increased, as has noise. Residents have been threatened and harassed by prostitutes, pimps and bystanders. Moreover, sexual encounters sometimes take place on or within sight of residential property. The general disturbance of the public is aggravated by the fact that the working hours of the street prostitutes often stretch from late morning through to the early hours of the next day, especially during good weather.

As one might expect, the amount of business varies considerably from day to day: three or four customers may be serviced on a good day, one on a bad day. Exceptional days, which bring up to ten customers, are only occasionally recorded. The transaction will be initiated by the customer as often as by the prostitute. The latter will normally try to settle all the details of price and services before moving off with the customer. Street prostitutes will often work in pairs, so that the partner can take down license numbers and note other points of identification, which can be used in the event of danger to the friend.

The sexual acts most often requested are oral sex and sexual intercourse, and take place either in the customer's car, or a hotel room chosen by the prostitute. The transaction normally takes no more than 20 to 30 minutes from the point when negotiations start. The emphasis is on quick impersonal service. Relatively few customers seek more bizarre services, and many prostitutes refuse to provide them.

Contrary to popular belief, prostitutes are well aware of the dangers of contracting and spreading sexually transmitted diseases. Normally they require customers to use condoms. Moreover, they have regular medical checkups. New or juvenile prostitutes are often not so solicitous of their welfare. Overall, as far as female prostitutes are concerned, the epidemiological evidence is that prostitutes are not a prime factor in the spread of sexually transmitted diseases (Haug and Cini 1984).

Apart from the pairing mentioned above, prostitutes are not organizationally-minded, as the scant success of prostitute protection groups shows. The Alliance for the Safety of Prostitutes in Vancouver has been successful in producing and circulating a "bad tricks" sheet, but attempts to organize the prostitutes and press for better conditions have met with indifference. Despite this lack of formal organization, informal pressures exist both to achieve some consistency in pricing, and to afford some protection from violence.

The net incomes of female street prostitutes are low, estimates ranging from \$12,000 to \$15,000 per annum. Even this figure may be high when the prostitute works for a particularly exploitative pimp. Male prostitutes, who operate without pimps, generally do better. It seems safe to assume that prostitutes operating off

the streets, whether on their own account or for prostitution businesses, earn more than street prostitutes, with call girls servicing well-heeled clients earning substantial incomes. There is little evidence that there is much movement up the status ladder in prostitution, meaning that individuals typically continue in the context in which they began.

Prostitutes tend to operate in their home city, or the one closest to their home. Some movement, however, does take place on circuits, for example the circuit which takes in the prairie and west coast cities. The transfrontier business tends to be from the United States to Canada, reflecting more relaxed law enforcement in Canada, and the realities of the North American convention business. With the exception of a tentative report of Asian women being brought over to the prairies, there is no evidence of an international trade in prostitutes involving Canada.

Reliance on Social and Health Services

Prostitutes do not appear to rely much on social services, preferring to live on their own wits, and to avoid contact with individuals or groups whom they suspect, will be judgmental. Their support systems are thus extremely limited. Furthermore, little or no resources or encouragement have been applied by government to address the special problems of prostitutes. As a result, they tend to be a low priority with social welfare agencies. The exception to this general picture is the fact that they do avail themselves of both legal and medical services. As already noted, they are normally well aware of the dangers of contracting and communicating sexually transmitted diseases, and will often avail themselves of the services of public health clinics. This contact with social services, however, seems to be more a product of business than of social concern.

The Customers

As already indicated the empirical data on customers is very sparse. What we know is derived largely from the anecdotal evidence of the prostitutes. They indicate that the average customer is from 30 to 50 years of age. Although the men seem to come from every sort of social and economic background, the customers of street prostitutes tend to be "blue collar," while their "white collar" counterparts seek the services of prostitutes off the street. The most frequent reason given by prostitutes for why customers seek their services is that they are looking for sexual acts in which their wives or girlfriends will not participate. For others, especially the single men, it is the opportunity to have sex without commitment. Male prostitutes report that their clients can be divided into those who are quite open about their sexual preference and those who lead otherwise straight lives, often with wives and families, and who desire to conceal their homosexuality.

Of the four per cent of male respondents in the national population survey who admitted to using the services of prostitutes, the majority were occasional users, with a relatively small group who made a regular practice of it.

Customers are the largest perpetrators of violence, both sexual and otherwise, directed at prostitutes. The majority of prostitutes have been sexually assaulted at

least once by a customer, as well as having money stolen from them. Less frequently the fortunes are reversed, and customers are assaulted or robbed by prostitutes or pimps.

Impressions

The general impression left by the surveys, especially as far as street prostitutes are concerned, is of a group of people who are disadvantaged economically and educationally, whose sense of sexual identification and self-esteem is wanting as a result of negative experiences or relationships as children, who gravitate to prostitution as an apparent way out of social dependency and an economic dead end, and who are thereafter subject to the desires and sometimes the violent frustrations of men who cannot find sexual satisfaction elsewhere or who seek to exploit them. Problems of life style and working conditions are sometimes aggravated by friction with residents in affected areas. While this characterization would not apply entirely to "off street" prostitutes who may be more in control of their own fate, it is likely that many of them have suffered similar negative experiences in their earlier lives, and thus have the same problems of sexual disorientation and lack of self-esteem.

PROSTITUTION — THE LEGAL RESPONSE

Historical Evolution

Canadian prostitution law has, until recently, followed closely that of England. As early as the mid-eighteenth century "keeping" a common bawdy house was an offence, together with two ancillary offences which were not crimes in England, namely being an inmate of or one "found in" (a customer in) a bawdy house. The English law of vagrancy was also emulated and it was an offence to be a prostitute or street walker not able to give a good account of herself (Backhouse 1984, 7).

A system of regulating prostitutes in garrison and naval towns in the 1860s, again borrowed from England, was rarely enforced and soon allowed to lapse (Backhouse 1984, 8-9. See 29 Vict. [1865], c. 8 [Province of Canada]).

All of this early legislation, with the partial exception of the bawdy house offences, reflected a basic double standard in social policy. They embodied the notion that loose women were the source of moral depravity in society and therefore rightly penalized, while their male customers were merely responding to natural urges and thus justifiably outside the law's reach.

With the emergence of more paternalistic concern on the part of legislators for the protection of girls and young women from the ravages of vice (often associated with a fear of "white slavery") in the later nineteenth and early twentieth centuries, additional provisions were added to protect "virtuous womanhood" from both procuring and pimping (Backhouse 1984, 11-12).²

At the provincial level, the main initiative inspired by the "social purity movement" active late in the nineteenth century seems to have been legislation to rehabilitate prostitutes and to prevent children from opting for that life. These expedients, which allowed detention orders for prostitutes and the removal of "difficult"

female adolescents from their homes, were often more repressive than the criminal law (Backhouse 1984, 14-16).³

The Present Law

General Attributes

The dual elements in the legislators' view of the prostitute as both moral and legal outcast, and the need to protect respectable women from the wiles of perverse males, has continued to influence the law and its enforcement through the twentieth century. The purely status offence of street-walking was, it is true, repealed in 1972 and replaced by the present soliciting provision in section 195.1 (*The Criminal Code Amendment Act 1972*, S.C., c. 13, ss. 12, 15). However, the bawdy house provisions with their uniquely Canadian focus on keeper, inmate and "found in" remain in the *Criminal Code* in section 193. The procuring offences and "living on the avails" continue to exist in section 195(1) of the Code, subject to recent changes which extend their application to both males and females (*The Criminal Code Amendment Act 1980-82*, S.C., c. 125, s. 13).

In analyzing the criminal law on prostitution it is important to recognize that prostitution is not an offence in Canada. Nowhere is the act of prostitution, or engaging in sexual services for reward, proscribed. It is possible that acts of prostitution will be caught under other sections of the Code; for example, gross indecency comes under section 157. However, it will normally be the act of indecency which is the focus of prosecution, rather than the fact that it also involves prostitution.

The *Criminal Code* deals with some of the circumstances in which prostitution takes place and is encouraged, and several of its side effects. More specifically, it addresses three types of problems:

- the public nuisance effects of street prostitution: street soliciting;
- the general promotion of prostitution and the control and manipulation of prostitutes: procuring and living on the avails;
- the institutionalization and commercialization of prostitution: the bawdy house offences.

The application of the *Criminal Code* of Canada is no longer confined to the female prostitute, but specifically includes males (see *The Criminal Code*, s. 179[1] for the definition of "prostitute").

Street Soliciting

Section 195.1 of the Code makes it a summary conviction offence to solicit "any person in a public place for the purpose of prostitution." The section has been attended with both interpretative and enforcement problems since its inclusion in the Code in 1972. Although it was assumed for a number of years that "soliciting" was satisfied by mere invitation, the Supreme Court of Canada in 1978 laid down the requirement of "pressing or persistent" conduct, without specifying exactly what might be understood by the term (*R. v. Hutt* [1978] 2 S.C.R. 476). The definition was further narrowed in 1981 in two Supreme Court decisions which established

that, while recurring entreaty of one individual might amount to "pressing or persistent" conduct, sequential overtures to different individuals did not (*R. v. Whitter*; *R. v. Galjot* [1981] 2 S.C.R. 606).

Uncertainty has also reigned as to who can be prosecuted, with conflicting decisions of appellate courts in Ontario and British Columbia as to whether a customer can be charged.⁴ Moreover, the Supreme Court has left some doubt as to whether the term public place in section 195.1 extends to a motor vehicle in a public place (*R. v. Hutt* [1978] 2 S.C.R. 476).

The Supreme Court of Canada judgments have made street soliciting a nuisance offence requiring a definite element of interference or intrusion. The consequence has been a drastic decline in its use, from approximately 2000 charges in 1974 to under 200 in 1982. This decrease reflects the thoroughly negative reaction of the police. After 1978, and in particular after 1981, most police forces in Canada gave up on section 195.1 on the grounds that, as interpreted by the Supreme Court, it was almost impossible to get convictions under it (for an example of police frustration see Winterton 1980). The frustration experienced by the police has also been felt by the residents of areas adversely affected by street prostitution, and by municipal politicians in large cities where the problem has been the most visible.

From the point of view of the prostitutes, although section 195.1, while enforced, was an advance over its predecessor, it was almost exclusively used against them rather than against their customers. It was the prostitutes who were more easily identified and who, in the police view, had less to lose from conviction. The urge to protect the reputation of the male partner is still strong. Moreover, there have been pragmatic reasons for the continuation of unequal treatment. Even in jurisdictions like Ontario, in which the courts had extended the provision to embrace customers, patterns of police recruitment have resulted in few, if any, female officers being hired, meaning that the decoy work to secure convictions has been done by males, naturally posing as customers.

Procuring

The litany of procuring offences set out in section 195(1) of the Code have never been very effective in practice. In the first place, they embody a "parade of horror" associated with the late 19th century and early 20th century scare about white slavery which, if it ever had real substance, has little relation to present realities in Canada. Moreover, in what can only be described as vestiges of the double standard in the law, successful prosecution requires corroboration of the complainant's story, and sets a one year limitation period for prosecution (*The Criminal Code*, s. 195 [3], [4]). Women, it seems, were considered deserving of protection, but were still not entirely to be trusted. The limited effectiveness of "procuring" as a criminal offence is demonstrated by the fact that procuring charges across Canada have oscillated between 100 and 200 per annum for the period 1974 to 1982.

Living on the Avails

Prosecutions for living on the avails of prostitution under section 195(1) (j) of the Code are taken fairly frequently. Unlike procuring, there is no requirement of

corroboration nor a limitation period. As long as the Crown can establish that the accused lived "wholly or in part on the avails of prostitution of another person" then a conviction will follow. The Crown's case is assisted by a presumption that if there is evidence that the accused lived with, or was habitually in the company of, prostitutes he or she was living on the avails (s. 195[2]).

Despite these elements in the law favourable to the Crown's case, there is considerable difficulty in securing convictions. Unless the police mount complicated and costly surveillance exercises, for which they rarely have the manpower or money and which do not always produce positive results, successful prosecutions occur only when a prostitute lays a complaint and agrees to appear as a witness.⁵ Typically, this only happens when she has been the victim of sustained and severe violence and has turned on the pimp who controls her.

The Bawdy House Offences

Under section 193 of the Code, charges may be brought for keeping, being an inmate of, or found in, or knowingly permitting leased premises to be used as, a bawdy house. The scope of the provision is wide. The individual prostitute may be caught not only as an inmate, but in some instances as a keeper. The definition of common bawdy house in s. 179(1) of the Code is so broad that it embraces the prostitute who works out of her own residence.⁶ Moreover, as the definition includes not only prostitution but "the practice of acts of indecency," it has also been used to attack establishments, such as gay bars, where sexual encounters take place without payment. In addition to section 193, section 194 makes it an offence to transport, take or direct a person to a bawdy house.

Considerable fluctuations have taken place in the number of charges laid under section 193, ranging from 1143 in 1975 to 269 in 1982. Moreover, the number of prosecutions varies considerably from province to province, from practically none in the Maritimes to a sizeable number in Ontario. As in the case of living on the avails, the police agree that enforcement is a difficult, time-consuming and costly process. Stake out and decoy techniques are in some cases foiled by the precautions taken by suspects to insulate themselves from association with what goes on between the individual parties engaging in sexual activity (Gemme et al. 1984, 45-49; Lault 1984, 16).

In the same way that customers are rarely prosecuted for soliciting, men "found in" bawdy houses are less likely to be prosecuted than prostitute inmates. Whether to protect their reputations or to elicit their evidence, the police usually decline to proceed against them.

Section 194 is almost never used.

Other Legal Expedients

Other more general provisions of the Criminal Code have been invoked from time to time by the police to deal with the circumstances or side effects of prostitution. These include the provisions on gross indecency, indecent acts, and causing a disturbance (*The Criminal Code*, ss. 157, 169, 171[1]). Moreover, the Attorneys-General of two provinces have sought to invoke the civil remedy of the injunction

to prevent the continuation of street prostitution as a common nuisance.⁷ Federal income tax legislation has also been used from time to time to penalize the operations of prostitutes or their employers (*Minister of National Revenue v. Eldridge* [1964] C.T.C. 545 [Exch. Ct.]; Crook 1984, 56).

Provincial legislation and municipal bylaws have sometimes been used to penalize or control anti-social conduct associated with prostitution. Landlord and tenant, highway traffic, petty trespass legislation, and even private nuisance actions have been employed on occasion to deal with various aspects of the disturbance caused by prostitution. Provincial public health legislation also contains provisions which can be used to detain prostitutes suspected of having sexually transmitted diseases.⁸

A number of Canadian municipalities have bylaws regulating the establishment and operation of escort and dating services and massage parlours.⁹ Bylaws to prohibit street prostitution in certain Canadian cities were vigorously enforced by the police while they were in effect from 1980 to 1983. But these attempts foundered when the Calgary bylaw was struck down as an illegitimate incursion on the federal parliament's criminal law power in *R. v. Westendorp* ([1983], 2 C.C.C. [3d] 330 [S.C.C.]).

None of these additional expedients, whether in the *Criminal Code*, or derived from provincial or municipal law, are considered satisfactory by the police. In addition to the fact that they only touch incidentally upon prostitution, the police resent having to make their way through a complex of provisions to find one which might work. In their book, the *Criminal Code* is the place to set out clearly and precisely prostitution offences which can be enforced efficiently and effectively.

Enforcement Practices

The fact that prostitution, although not illegal, is not treated by the law just like any other activity, has implications for the relations between prostitutes and the law enforcement authorities. The relationship is at best uneven. Police attitudes reflect the schizophrenic position of the law. Some officers are quite sympathetic to prostitutes, seeing it as their duty to go to the aid of prostitutes as to that of other members of the public. Others, however, believe that prostitutes are the victims of their own foolishness, and are therefore not entitled to the same consideration as their fellow citizens.

In addition to formal enforcement of the Code, the police resort to informal means of enforcement. These expedients relate largely to street prostitution and are designed by and large to make contacts with customers difficult. They typically have greatest impact directly on the prostitutes. It is the prostitutes who are stopped, cautioned, harassed, moved on, threatened with prosecution for other offences and photographed for identification in police files. The result is that, even though the law itself may be difficult of enforcement, the police have more subtle means of maintaining control over, and making life difficult for, prostitutes.

Although there is evidence that some police officers treat female prostitutes with consideration, their attitude towards male prostitutes is usually far less understanding. Many police officers find it difficult to identify with anyone with a different sexual

orientation. As a consequence, male prostitutes are far more likely than their female counterparts to be harassed, searched and manhandled, and less likely to receive ready assistance by the police when they are victims of offences.

Interestingly, although it is clear that the police feel strongly that they need adequate tools to control the side effects of prostitution, they are not all convinced that the criminal law is the best way to achieve this objective. Despite official pronouncements, there appears to be a sizeable minority of police officers who would prefer to see prostitution regulated rather than proscribed.

Conclusions on the Present State of the Law

The present state of the law on prostitution in Canada is unsatisfactory. The coexistence of contradictory strands of Victorian morality with more modern nuisance accretions in the law has done little, if anything, to deal effectively with the social problem of prostitution. Claims to the contrary notwithstanding, this lack of effectiveness is not simply related to the demise of *Criminal Code* section 195.1. Prostitution laws are typically only enforced perfunctorily. As long as street prostitution takes place in the less salubrious areas of cities or towns, the law will be enforced only sporadically to demonstrate that the police are in control, or to placate moral concern in the community. With off-street prostitution, the stimulus to enforcement is almost always a complaint from the public. For the most part, the police tend not to consider this form of conduct a law enforcement priority, and certainly not one which warrants active measures. That having been said, there is no doubt that the enactment of, and difficulties in practice with, section 195.1 have frustrated police as their control has appeared to diminish, and have created problems for municipal authorities concerned about the increasing ire of downtown residents who feel themselves adversely affected and about the real or imagined detriment to the general image of their cities.

The law continues to retain vestiges of the old double standard in its enforcement. While the number of prostitutes charged and convicted has decreased with the lack of persecutions under section 195.1 of the Code, prostitutes still see themselves as legal outcasts, and certainly the most likely to be singled out in any stiffening of the criminal law.

PROSTITUTION — THE OPTIONS

Both the National Population Survey conducted by the Fraser Committee and the briefs submitted to the Committee in its public hearings reveal a broad spectrum of concerns, and of approaches to resolving them, among Canadians.

Public Attitudes

The National Population Survey reveals that prostitution is not a major problem or concern for the majority of Canadians. Fifty-nine per cent (59%) of respondents indicated that they did not know of the places in their community in which it was taking place, and approximately three quarters were of the view that it was not occurring in their residential neighbourhood or where they shop. This finding reflects

the fact that most Canadians do not encounter prostitution because of the limited geographic extent of its most public form, street prostitution. As a result, the views of Canadians on prostitution tend to be at best impressionistic.

The figures from the survey show that Canadians, by a ratio of 62 per cent to 35 per cent, consider the exchange of sexual services for money unacceptable. Wide negative ratios are also evident in the perception of harms flowing from prostitution: involvement of organized crime (61 per cent to 11 per cent); violence (59 per cent to 16 per cent); venereal disease (69 per cent to 20 per cent); adverse effects on property values (62 per cent to 16 per cent).

Despite this high level of antipathy to prostitution, there is far less certainty over what should be done about the phenomenon. Although only 11 per cent as opposed to 84 per cent found street prostitution acceptable, and 28 per cent as compared with 67 per cent designated "red light areas" acceptable, the ratio shrank to 38 per cent to 55 per cent in the case of brothels, to 45 per cent to 52 per cent in the case of "prostitution in private," and 43 per cent to 52 per cent in the case of escort and call girl services.

Similar uncertainties exist about legal strategies. The respondents by a ratio of 62 per cent to 29 per cent favoured toughening the law against prostitution, and by 71 per cent to 6 per cent giving increased power to the police to control prostitution. However, as many as 40 per cent as opposed to 47 per cent indicated that they favoured decriminalization of prostitution-related activities, and significant numbers expressed support for various regulatory expedients to control it, for example, zoning (61 per cent), and licensing of prostitutes (63 per cent).

Notwithstanding that a ratio of 59 per cent to 33 per cent favoured the increase of social service funding, and 57 per cent to 36 per cent social services initiatives, a decisive 92 per cent to 5 per cent felt that prostitution will always exist whatever steps, legal or social, are taken to combat it.

The figures suggest that Canadians, by a large margin, consider prostitution to be an unfortunate and undesirable social fact. Moreover, a sizeable majority see it as socially harmful. However, they view it as a given, and are not sanguine that any expedient will successfully remove it. They are seriously divided and confused when it comes to devising legal strategies to deal with prostitution. Somewhat less doubt is apparent in the desirability of developing social strategies to deal with it.

The Views from the Hearings

Suggested solutions to the problem of prostitution in the briefs and representations received by the Fraser Committee fell into four categories. First, there were those who favoured increasing the rigour of the criminal law. This group ranged from fundamentalist religious sects who would equate entirely the criminal law and moral injunction, to the police, municipal politicians and community groups whose more pragmatic objective was the stiffening of the soliciting provision in the Code to "reestablish" control on the streets. The representatives of this group, while they could point to the likelihood of easier control, evinced little or no concern for

devising social solutions to prostitution; failed to recognize the realities of enforcement, however draconian the law; and demonstrated a rather naive supposition that a stricter law would be applied equally to both prostitutes and customers.

Second, those from the opposite end of the spectrum felt that prostitution-related activities should, as far as possible, be decriminalized, unless they involved other forms of criminal conduct, or exploitation of prostitutes. Included in this group were women's organizations, civil liberties associations, gay rights advocates, social workers and some mainstream church groups. Although they correctly observed that the present law has proven ineffective in combating prostitution, and has reduced the prostitutes' status to second-class citizens, the representatives of this view tended to ascribe to the general criminal law more effectiveness in combating the side effects of prostitution than is realistic; were somewhat confused as to whether the desired result of decriminalization was the disappearance of prostitution or the improvement of its practice; and ignored the need for some regulatory control of prostitution as a business.

The third view, subscribed to in the main by individuals, was that the social reality of prostitution should be recognized and that it should be legalized and subjected to regulatory forms of control. While rightly concluding, along with the second group, that the present law had failed, the representatives of this point of view concluded perhaps too readily that prostitution is a necessary evil. Moreover, there was little consistency as to what exactly should be regulated and how, and a failure to recognize the opportunities for repression and venality in regulatory schemes for prostitution.

An interesting combination of the first and second positions propounded by Professor Backhouse and her associates advocated stiffening the penalties for the male parties involved in prostitution, and decriminalizing the activities of prostitutes. It was felt that this would assist in attacking the cause of prostitution — the sexual imperatives of men. While justifiably pointing to the source of prostitution and deprecating the traditional double standard in the law and its enforcement, this position attached too much significance to law as an instrument of social change in this area. Moreover, insofar as their recommendations were specifically confined to street prostitution and ignored prostitution behind closed doors, they seemed unlikely to achieve the overall purpose of making the "wages of sin" altogether too costly. To gain that ambitious end might well require a totally unacceptable level of repression. In any event, doubts might well be raised about the validity of such an ostensibly discriminatory expedient under the *Charter of Rights and Freedoms*.

All in all, while there were many valid and valuable points in most of the briefs presented on the law, there was a tendency to focus on only part of the problem or to fail to think through fully all of the implications of the changes being suggested.

A minority of presenters before the Fraser Committee (social workers, women's groups and several church groups) suggested various social strategies to deal with prostitution. Indeed, some went so far as to suggest that the focus of attention should be on social rather than legal "solutions." Among specific suggestions, usually treated as complementary by their advocates, were: increasing awareness of sexual

and incestuous abuse of Canadian children; improving law enforcement and treatment opportunities for those engaging in sexual abuse and incest; improving social and sex education programmes generally; increasing dramatically the funds and resources for programmes for runaway youth; applying funds to the development of havens and halfway houses for adult prostitutes; and conducting more extensive research into prostitution as a social phenomenon.

By and large these suggestions were well thought out, sensitively formulated and frequently informed by the presenters' experience working with prostitutes.

Lessons From Other Countries

Comparative work on legal and social attitudes toward prostitution was carried out on behalf of the Fraser Committee in the United States, Australia, England, New Zealand, and five continental western European countries: France, Denmark, Holland, Sweden, and West Germany (Sansfaçon 1984; Great Britain Home Office Criminal Law Revision Committee 1982, 1984; Kiedrowski and Van Dijk 1984). While it is difficult to draw hard and fast conclusions from such diverse sources, variable data and cultural differences, some tentative conclusions are possible.

First, it seems that the law by itself enjoys no special claim to provide a solution to prostitution within society. Indeed, it is only in those countries like Sweden, Holland and Denmark, which have recognized the value of social strategies in changing attitudes about prostitution and in responding to its human problems, that any success in containing the phenomenon has been recorded.¹⁰

Second, there is no necessary correlation between the existence of harsh criminal law and effective control of prostitution. The United States, which has perhaps the most draconian criminal law system and treats prostitution itself as a crime, has a very spotty record of enforcement and thus effectiveness. While the public manifestations of prostitution are absent in small town and rural America, the problem continues to exist in the large cities where the police do no more than "chase" it. To one degree or another, this pattern is replicated in France, England, New Zealand and Australia, where the legal regimes are similar in both substance and modes of enforcement to those in Canada.

By the same token, there is little evidence that decriminalization necessarily results in an increase in prostitution. That has certainly been the experience in Denmark and Holland, where decriminalization has been attended by effective regulation at a local level. Indeed, a reported consequence of decriminalization in both countries has been a decrease in the influence of pimps because prostitutes are able to operate independently without fear of prosecution, which removes one of the major justifications for "protection." Where this link between decriminalization and regulation has not been made, as in New South Wales, the results of decriminalization have been far less salutary; in fact, there has been an increase in prostitution-related activity.¹¹

Although the combination of decriminalization and regulation of the business of prostitution has enjoyed some success, it is important to recognize that it can result in repressive and venal systems of control. That seems to be the case in the U.S. state of Nevada, where certain counties, by custom or option, have licensed

brothels, or "ranches." The operation of these establishments at worst borders on bondage, and at best seriously infringes the civil liberties of those working there (Pillard 1982).

The data suggest that whatever system is devised for dealing with prostitution, it is likely to be both legitimate and successful only if it recognizes that, along with the law, long-term and effective social strategies for dealing with its causes are required, and that the law must reflect a genuine balance of all the interests at stake. These interests include that of the community in protecting itself from offensive or intrusive conduct; that of the prostitutes and customers in having somewhere safe and healthy in which to conduct their liaisons; and that of the state in preventing unnecessary exploitation and in preserving legality and public order.

Guiding Principles

By way of concluding this chapter, it is worthwhile to set out a series of principles which should inform the decision-making in Canada on prostitution in the future.

If, as has been suggested above, the long-term solutions to prostitution lie in the area of creative social policy, rather than in the "will-o-the-wisp" application of the criminal law, then a crucial starting point is recognition of the need for federal-provincial cooperation. For too long the naive assumption at both the provincial and municipal levels has been that prostitution would be resolved if only the federal government would wave its "magic" criminal law wand. The result has been the neglect of prostitution as a serious social problem. If prostitution is even to decrease in importance as a social phenomenon in the future, then additional money and manpower is needed for programmes to remove economic and social inequalities between men and women and discrimination on the basis of sexual preference, to assist both women and young people in need, to allow realistic and sensitive sex education in the nation's schools, and to provide support for juvenile and adult prostitutes. In a federal system such as ours, none of this is possible without the significant involvement of provincial governments. Moreover, structures are urgently needed which will allow collaboration between the federal authorities and their provincial counterparts, so that the necessary resources and expertise can be harnessed. Put bluntly, the "buckpassing" on this important social problem has to end!

As it is unlikely that the combination of services, education and general socialization required to neutralize the causes of prostitution will provide instant dividends, the problems surrounding prostitution — friction, violence and exploitation — can be expected to continue, in the short- and mid-term. As a consequence, it is difficult to see the law washing its hands entirely of the problem in the foreseeable future. If the future law is not to prove as inconsequential and discriminatory as the present law, it is important that new factors be considered and different thinking be applied.

In the first place, the *Charter of Rights and Freedoms* is already causing the courts to look more critically at law, including criminal law, which is discriminatory in either its substance or mode of enforcement. It is certainly not out of the question,

therefore, that law which discriminates against prostitutes, as arguably section 195.1 presently does, could be struck down as contravening the equality rights in section 15 of the *Charter*.

Second, it is important to recognize that the law is not limited in its reaction to a social problem like prostitution to the invocation of the criminal law. Regulation, rather than proscription, could be used to deal with certain of its features. Ironically, insofar as certain types of prostitution businesses such as escort services and massage parlours are already the subject of municipal bylaws, regulation of prostitution already exists in Canada. Once again, if the law emphasizes regulation rather than proscription, or a combination of these techniques, then the provinces will have legal responsibilities along with the federal authorities.

Third, a clear distinction should be made in the law between children and adults engaging in prostitution, reflecting the need to protect children, who lack the maturity to recognize fully their best interests, and, as far as possible, to leave adults free to choose their own lifestyles. Whatever the conclusion reached in relation to adults, the position of the child victims of prostitution should be made much clearer than it is under the present law, in which no distinction is made between the use of adults and children for prostitution. Offenses should be added to the Code specifically prohibiting the exploitation of children for sexual purposes for money or other reward, whether by procurers, pimps or customers. In the case of those under age there is every reason, as the Badgley Committee suggested, for making the strongest social statements about the unacceptability of this behaviour and for applying heavy penalties to it. It is also important that the provinces review their child protection legislation to see that it provides adequate protection to children who are abused or in danger of being abused in this way. The criterion here must be, first and foremost, protection.

By contrast, if the criminal law is to continue to combat some of the less desirable side effects of adult prostitution, then the criterion of the law should be that some definable harm has been caused to one of the parties or to another individual. This criterion would be satisfied in the case of violence or its threat, or the nuisance caused by noise, unsightly episodes or harassment of third parties. It should no longer be sufficient that the conduct offends "the moral sense of the community," or is bad for the moral welfare of the individual. The conduct of the parties, both prostitute and customer, should be decriminalized, insofar as this does not result in the sort of harm mentioned above. The consequence of decriminalization is likely to be a lessened feeling of victimization, for prostitutes in particular, and possibly a greater sense of independence.

The fourth point, which flows from the last, is that if the criminal law exists to deal with the exploitation of adult prostitutes, it should be limited in the future to conduct which is violent or which threatens physical harm. Little is gained by the present law which tends to treat adult prostitutes as incapable of making rational decisions about their work and lifestyle. While some of the relationships they develop would not be considered ideal, they are often voluntary and not violent or coercive. There is no obvious reason, other than moral concern, why the law should intrude here. In fact, given that the present laws against pimping and procuring are only enforced against the violent exploiters, the law has no broader impact

in practice as it is. We would do far better to move more vigorously against the real villains and the obvious harms.

Finally, it must be recognized that prostitution has a tensile quality, in the sense that police pressure in one setting or location will typically produce a shift to another. Thus, in the past, a crackdown on soliciting in bars, or on prostitution in massage parlours, has resulted in an increase in street prostitution and vice versa. Rather than using the law ineffectually in this negative fashion, it would be worth considering making it easier for prostitutes and their customers to conduct their liaisons in private in relative safety. While this will raise in many minds the spectre of commercialized prostitution, a system which allows one or a small number of adult prostitutes to operate out of an establishment, or through a business, could be successfully regulated. Again, one must point to the fact that this is already possible in the case of escort services and massage parlours in some Canadian communities.

If prostitution was viewed as a problem susceptible to a combination of strategies, both social and legal, requiring the joint ingenuity of all levels of government, then I expect we would begin to make progress in dealing effectively with it. If we insist on limiting our response to the blunt instrument of the criminal law, then we are guaranteeing its future.

NOTES

1. There are examples of provincial inquiries into vice in particular municipalities, an example being the Commission of Inquiry into prostitution in Calgary in 1907, conducted by Mr. Justice Stewart of the Alberta Supreme Court.

2. See *An Act Respecting Offenses Against Public Morals and Public Convenience*, 49 Vict. (1886), c. 157 (Canada); *The Criminal Code*, 55 & 56 Vict. c. 29 (Canada); 3 & 4, Geo. V (1913), c. 13, s. 9 (Canada).

3. See for example, 34 Vict. (1871), c. 30 (Canada) and 42 Cit. (1879), c. 39 (Ontario).

4. *R. v. Di Paola* 1978, 4 C.R. (3d) 121 Ont. C.A.; *R. v. Dudak* 1978, 41 C.C.C. (2d) 31 B.C.C.A.

5. See *R. v. Cohen* 1939, 71 C.C.C. 142 S.C.C.; *R. v. Worthington* 1972, 22 C.R.N.S. 34 Ont. C.A.

6. (See *R. v. Pisces Health Spa* [1981], 63 C.C.C. [2d] [Alta. S.C., App. Div.]. See also unreported cases in Russell [1982, Ottawa, L. Rev. 270, 298-304]).

7. See the successful attempt in *Attorney General for British Columbia v. Couillard* (1984), 14 C.C.C. (3d) 169 (B.C.S.C.) and the unsuccessful attempt in *Attorney General for Nova Scotia v. Beaver* 19 Dec., 1984, unreported (N.S.S.C.).

8. See for example, *Venereal Diseases Prevention Act*, R.S.A. 1982, c. V-2, ss. 8(1), 9, 13, 14; *Venereal Diseases Prevention Act*, R.S.O. 1980, c. 521, ss. 4(1), (2), (3), 5, 6, 8, 9.

9. See for example, City of Saskatoon, Bylaw 6098, 23 August, 1982. The bylaw establishes an annual licence fee of \$2000 for the business, requires that each "escort" have a licence at an annual rate of \$500, stipulates that a list of "escorts" be kept by the operator of the business which must be furnished on demand to any peace officer or the Chief Licence Inspector, and demands that a record be kept of every transaction.

10. In Sweden a national programme has been launched to remove the causes of prostitution. See *Bill concerning Certain Measures Against Prostitution*, 1981-82; *Bill concerning Amendments in the Penal Code (Sex Offenses)*, 1983-84.

11. This problem occurred in Sydney after the repeal of the street soliciting offence by the *Prostitution Act*, 1979, N.S.W. as part of a general move towards decriminalization.

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***Client Groups and the Service
Delivery System***

EIGHT

VOLUNTARISM AND IMMIGRANT WOMEN IN SASKATCHEWAN

Angela W. Djao

As the call for reducing the national deficit reaches a crescendo among political leaders, the prospect of government divesting its responsibility for social programmes and leaving them to non-governmental agencies in the commercial and voluntary sector becomes increasingly imminent. The proponents of deficit reduction believe that the welfare state has overspent itself, and that many statutory social services should be provided by the commercial sector, thus keeping alive the competitive spirit of free enterprise, minimizing waste and improving efficiency. An alternative to providing services for profit is relying on the voluntary sector to provide them. It is believed that the voluntary contribution by the citizens of their time, money, expertise and effort would unleash a groundswell of altruism, goodwill, imagination and initiative.

This chapter does not deal with the commercialization of the social services taking place today. Nor is it a critique of the participation of the voluntary sector in the provision of social services. The focus of the chapter is one area in Canadian life in which there is minimal statutory service and which has always relied on the voluntary sector, namely, services to help immigrant women in their efforts to become part of Canadian society. The chapter will begin with a brief overview of some immigration regulations, and the provision of services for immigrants by the federal government, by the Saskatchewan government, and by voluntary service organizations. Some findings from a study of the needs and concerns of immigrant women in Saskatchewan, conducted in the summer of 1984, will then be presented. The findings deal specifically with only one service for the immigrant women: an

information and referral service regarding the basic resources in the society to help them in their adaptation and integration. The position of the immigrant vis-a-vis the Immigrant Aid Societies is discussed and analyzed according to the dialectical perspective on social policy. Lastly, some policy considerations of voluntary action are explored.

IMMIGRATION REGULATIONS

There are different categories of landed immigrant status: independent, family class and assisted-relative. An independent landed immigrant is one granted landed immigrant status on the basis of accumulated points for education, work experience, work category, economic resources, etc., under the point system. A person in the family class is one granted landed immigrant status through the sponsorship of an immediate family member who is either an independent landed immigrant or a Canadian citizen. The family class usually includes the spouse and children under 21 of the independent landed immigrant. A person in the assisted-relative category is one granted landed immigrant status through the nomination of a relative (not in the immediate family) and the application of the point system.

In addition, there are two further categories of newcomers: conventional refugees and the designated class of immigrants. The latter refers to those persons displaced from their homeland, such as the "boat people" from Indo-China and exiles from some Latin American countries. They are either government sponsored or privately sponsored (e.g., by churches or ethnic communities).

It should be noted that, in an immigrant family, only one member is granted independent status. In most cases, it is the husband who is so designated, and the wife is categorically put in the family class, along with the children, as dependents. This system of assigning status disregards the reality that the wife may have education and work experience comparable to her husband's and may have made an essential contribution to the family income before coming to Canada. For example, among the industrial workers in Hong Kong and the Southeast Asian cities (important sources of immigrants to Canada), the family of two income earners is the norm. Moreover, the financial security of many immigrant families after coming to Canada depends initially on the labour force participation of the wife and, later, on that of both spouses. At the same time, the two-earner family is increasingly prevalent in the Canadian society at large. Yet, in immigration policy, this basic reality is denied. The official view of the immigrant family in the immigration procedure is that there is one independent member on whom the others must depend for their sponsorship, livelihood and welfare. Thus, the immigration process systematically structures sexual inequality within the family and the dependence of one spouse (usually the wife) on the other.

Since immigration is not under provincial jurisdiction, the provincial governments are not directly responsible for immigration or for immigrants. The provinces cannot change immigration policy, laws or regulations. However, they could put pressure on the federal government to adapt immigration laws and regulations to changing social and economic conditions. Also, they can control their own political, legal

and economic environment to attract or discourage potential immigrants. In fact, the provincial governments have often gone to great lengths to recruit certain kinds of immigrants to settle in their provinces.

SERVICES FOR IMMIGRANTS

Before we can examine the social services for immigrant women, it is necessary to present some background information on the provision of services by the federal government, by the Saskatchewan government and by the voluntary agencies for the immigrants.

The Federal Government

Insofar as the reasons for relaxing or tightening immigration to Canada have always been economic, the incentives and disincentives held up to prospective immigrants have also been economic. For example, they are shown the promise of land or jobs or, alternatively, the lack of these resources. The dream of economic reward and the spirit of self-reliance have gone a long way to offset the lack of services for immigrants, especially immigrant women. Despite its responsibility for immigration, the Canadian government is minimally involved in the provision of direct services to immigrants. Traditionally, the government has relied on the voluntary sector to provide the assistance and services needed by the newcomers. Immigrants went to family members, relatives and people from their home countries who had come before them to help them look for jobs and housing, enroll their children in school, go shopping, get around town, and so on. They also sought relatives and friends to act as interpreters and guides in their encounters with government officials, doctors, the police, etc. Their situation was essentially one of using the informal caring networks: first the family, as the basic unit of care, and, to a lesser degree, the "moral communities" such as churches and ethnic groups (see Lawrence 1982). This pattern persisted even after World War II and into the 1960s when, due to changes in the immigration policy, larger numbers of non-English-speaking and non-white immigrants came to Canada. In the rest of the paper, the term "immigrant women" refers mostly, but not exclusively, to those immigrant women of visible minority ethnic groups, that is, groups who are non-white and non-English-speaking, or who are from Third World countries.¹

With the adoption of the multicultural policy in 1971, the federal government assumed a higher profile in regard to services for immigrants. Funding is provided to essentially two kinds of voluntary associations: the ethnic associations and the Immigrant Aid Societies. Funding to ethnic associations is often for the preservation of language and culture and is often tied to specific projects, such as language classes and multicultural folk festivals. The ethnic associations typically are not service organizations but volunteer associations based on membership, with few or no paid staff.

Funding to the voluntary Immigrant Aid Societies is for the express purpose of providing settlement and adaptation services. While funding is still tied to projects, it allows for a more formal administration structure. The Immigrant Aid Societies (IAS) will be discussed in greater detail later.

Multiculturalism rhetoric aside, government funding for non-government organizations for the provision of services to immigrants is a necessity. Under the tremendous pressures of technological change and urbanism since the end of World War II, the ethnic groups could no longer shoulder the burden of easing the newcomers into Canadian society. Perhaps because of their minority status, the families and communities of the ethnic groups have continued to provide care and services to their members longer than their non-minority counterparts. Delayed as it was, government responsibility for the provision of services to immigrants was needed to relieve the strain on the ethnic groups.

In a sense, the establishment of the formal, government-funded, voluntary IAS can be seen as a step towards expanding the scope of the welfare state. Nevertheless, government responsibility does not mean that services for the immigrant are statutory. Most of them are not in the sense that, if they were not provided by the voluntary IAS, the government would not be obliged to provide them directly. Moreover, the services provided by the IAS remain voluntary insofar as ordinary citizens are expected to support them by contributing time, effort and innovative initiative. The government retains control over the services through its funding.

While government responsibility for services to immigrants is largely interpreted to mean support for the voluntary organizations, the federal government does have limited statutory services for immigrants. Settlement services (finding housing, buying winter clothing, grocery shopping, and taking care of other immediate needs upon arrival) for the government-sponsored immigrants of the designated class are statutory. In most cities, the federal government does not itself provide the settlement services, but funds the voluntary IAS to deliver them.

Another statutory service is full-time training in one official language for the primary wage earner in the family. As the primary wage earner is usually the husband, immigrant women are denied one important resource that could open the door to future employment and educational opportunities. Some women were told by immigration officials that, as housewives, they did not need to learn English. In fact, many women work in garment factories, food processing plants, janitorial work and other low-paying, labour-intensive industries while their husbands go to school. But, because of their lack of knowledge of English, the women are seldom able to get out of the low-wage job ghetto. Thus, there is institutional discrimination against immigrant women in the statutory services for immigrants, and its impact is far-reaching.

The Saskatchewan Government

The government of Saskatchewan does not have special social services for immigrants or immigrant women. However, the Saskatchewan Department of Culture and Recreation provides funding to the Immigrant Aid Societies in Saskatchewan.

With one exception, the various social services are available to immigrant women. Immigrant women are eligible for a day care subsidy as long as the usual conditions are met. However, immigrant women often have difficulty finding interpreters in most services.

The one programme in which immigrant women have problems meeting eligibility requirements is the Saskatchewan Assistance Plan (SAP). For the duration of time the immigrant women are under sponsorship, they are not eligible for SAP. The rationale is that their sponsor, (the federal government, a church group, or a husband), is responsible for their welfare for that period. This situation could pose considerable hardship for an immigrant woman with an abusive husband. As she is in the family class, her sponsor is her husband. Since she cannot apply for SAP on her own, she probably would have no choice but to stay with her husband.

Immigrant Aid Societies

Immigrant aid societies are located in three Saskatchewan cities: Regina, Saskatoon and Yorkton. They are non-profit service organizations. Each IAS has a board of directors composed of volunteers, paid staff, and volunteers in direct service.

Funding for the IAS comes from a variety of sources. Two federal departments provide most of the revenue. The Department of Employment and Immigration funds the statutory settlement programme. The Department of Secretary of State funds a number of programmes under the general heading of citizenship development, for example, free English as Second Language (ESL) classes for those not qualified for statutory language training, information and referral, legal awareness sessions, prenatal classes and recreational activities. Additional funding comes from the Saskatchewan government, the municipal governments and, in at least one city, the United Way.

There is a sharp contrast between the statutory ESL classes provided for the primary wage earners and the non-statutory classes offered at the IAS, attended for the most part, by women who stay home. The former is full-time, intensive, and taught by qualified instructors who receive remuneration. It lasts up to half a year. The students attending these classes also receive an allowance.

The ESL classes at the IAS are part-time and taught by volunteers, with the programme administrators occasionally filling in for missing teachers. "Day care is provided during the classes, and one chronic problem appears to be the shortage of day care volunteers" (Currie 1982,68). Some transportation is provided in the winter months for mothers with small children. There is no formal training for the teachers, who are responsible for developing their own programmes. Although there are three levels of instruction — beginners, intermediate and advanced — many of the women find that, after completing their classes, they have acquired conversational English but lack reading and writing skills. The most serious omission is that the students are not entitled to any allowances. Thus, following from dependent status assigned to them by the immigration process, the women receive a second-class service.

The IAS also offer private weekly tutoring in English on a one-to-one basis. The tutors are volunteers with no formal training in teaching ESL.

VOLUNTARISM IN ACTION

As has been argued above, the government is quite clearly of the view that services for immigrant women should be provided by the voluntary sector. In this section, the experience of the immigrant women of voluntarism will be presented and discussed.

In a study of the needs and concerns of the immigrant women in Saskatchewan (referred to as the IWS study) in 1984, an attempt was made to ascertain how, and to what extent, immigrant women learned about the resources and services that helped them to settle and adapt to life in Canada.² We shall examine each of the sources.

Informal Caring Networks

It was found that, to a large extent, the immigrant women still rely on individuals who form informal caring networks providing information on the basic services and resources in Canadian society. These individuals are family members (husband, daughter, sister), relatives (uncles, cousins), friends from the home country and, to a lesser extent, private sponsors (see Tables 8.1 and 8.2). It would seem that the immigrant women who fared the best, that is, had the least difficulty in finding out about needed resources and in finding their way in their new society, were those married to Canadian-born husbands.

Table 8.1
Sources of Information on Resources — Part 1*

Sources	A		B		C		D		E	
	No.	%	No.	%	No.	%	No.	%	No.	%
Received No Help	9	10	5	5	49	52	14	15	13	14
Government	23	24	15	16	9	10	11	12	6	6
Community Organization	3	3	9	10	4	4	12	13	8	8
Volunteer Organization	1	1	2	2	2	2	2	2	4	4
Individuals	17	18	43	45	17	18	38	40	46	48
Combination	4	4	8	8	4	4	4	4	8	8
Other	7	7	9	10	6	6	8	8	3	3
Not Applicable	31	33	4	4	4	4	6	6	7	7
TOTAL	95	100	95	100	95	100	95	100	95	100

Key

A - English courses

B - Health care system

C - Immigrant rights

D - Housing

E - Food/Household provisions

*Percentages may not add up to 100% due to rounding.

Table 8.2
Sources of Information on Resources - Part 2*

Sources	F		G		H		I		J		K	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
No Help	19	20	39	41	11	12	10	11	50	53	22	23
Government	21	22	2	2	5	5	8	8	2	2	-	-
Community Organization	2	2	6	6	1	1	6	6	2	2	5	5
Volunteer Organization	1	1	-	-	1	1	1	1	1	1	2	2
Individuals	21	22	6	6	22	23	16	16	5	5	41	43
Combination	44	4	4	3	3	3	3	-	-	5	5	
Other	11	12	24	25	4	4	4	4	3	3	14	15
Not Applicable	16	16	20	21	48	51	47	50	32	34	6	6
TOTAL	95	100	95	100	95	100	95	100	95	100	95	100

Key

F - Employment possibilities

G - Employment rights

H - Child care services

I - Schools and the educational system

J - Family counselling

K - Entertainment/social activities

*Percentages may not add up to 100% due to rounding.

The fact that caring individuals provide the most information may at first lead one to think that helping newcomers settle in Canada could be handled most effectively, efficiently and economically by the informal caring networks. Yet the women interviewed expressed a somewhat different view. Those who received no help at all, or were given inadequate information, were frustrated and angry. They constitute by far the majority. Those who received information from individuals, on the other hand, saw their circumstances as quite fortuitous. They attributed their way of acquiring information to luck. In case after case, the immigrant women summarized their situation: "I was lucky to have my husband (or daughter, or uncle), who helped me. I wouldn't know a thing without his/her help. I know many other women who were not so fortunate."

While these women were "lucky" enough to receive information through the informal caring networks, they were nevertheless concerned about the adequacy or accuracy of the information given. They had a nagging uncertainty about whether they had been advised of all options. After all, the individuals who helped them could only tell the women what they knew. The situation could have been very easily the ignorant advising the ignorant.

The picture that emerges from the immigrant women's comments and answers to open-ended questions is that they are poorly informed about the resources in society. This means that, while informal caring networks constitute the source of

information most relied upon, the women see it as an inadequate stop-gap measure. As one woman pointed out, "If you don't know about a service, how can you make inquiries about it?" The immigrant women are acutely aware that there is a great deal they do not know, and what they do know is patchy and, at times, unreliable. What they are looking for is clear, concise knowledge provided in a systematic manner.

Government

The category of "government," as a source of information, refers to both the federal and provincial levels. "Government" was cited most frequently as the source for two types of information: English courses (24 per cent) and employment possibilities (22 per cent).

As mentioned above, ESL is one of the statutory services provided by the federal government to the government-sponsored independent immigrants, and many women do not qualify for these classes. They are referred to other agencies, such as the IAS, which provide English classes inferior, in many ways, to the government-sponsored ones.

That the "government" is cited as the source of information on employment possibilities is only partly due to the presence of counsellors in the immigration department who assess the marketability of the women's skills against the general labour market conditions. However, it is not the responsibility of the counsellors to find jobs for the women. The women regard the government as a source insofar as available jobs are posted in the Canada Employment Centre.

The most disturbing thing about the "government" as the source of information is what it is not. On areas in which one would likely expect the government to provide information, such as immigrant rights and employee rights, in fact many responses were either "no help" or "individuals." Similarly, regarding those areas under provincial jurisdiction, such as health care, education and day care, most immigrant women did not cite "government" as the source of information.

Voluntary Service Organizations

"Community organization" in the Tables refers to all voluntary service organizations which receive funding from any government. Relatively few women cited this category as the source of information. It should be noted that, as this category includes not only the IAS but also community colleges and other service agencies, the response rate for the IAS is even lower. Thus the effectiveness of the IAS could be seriously questioned, especially in view of the fact that one of their services is information and referral.

With the exception of two services, health care and housing, responses citing "community organizations" as sources score less than 10 per cent for all of the services. Even the response rates for health care and housing are fairly low: 10 per cent and 13 per cent respectively. Finding housing for government-sponsored immigrants is a statutory service within the settlement programme. The clients for this programme are referred to the IAS by the immigration department when they arrive.

Volunteer Organizations

This category refers to non-profit, membership-based associations that do not receive any funding from the government. The term is used mainly for ethnic associations. As is shown in the Tables, they are not helpful sources of basic information for the immigrant women.

IMMIGRANT WOMEN'S VIEWPOINT

From the evidence presented above, it is obvious that immigrant women are a neglected group in Canadian society. As one woman put it: "They give better information on a community to the tourists." But the lack of information is not the only barrier faced by immigrant women. They are also systematically victimized by systemic (structural or institutional) sexism and racism. Their lack of access to full-time ESL is only one example of structural sexism. They also encounter other "problems": their educational standards and work experience acquired outside of Canada are not recognized by educational institutions and employers; there is a scarcity of day care services for children; they are exploited by unscrupulous employers and landlords; they experience the double-day syndrome; and they encounter the prejudice of ordinary Canadians. These problems are often treated by government officials and social service workers as women's personal problems, or as problems of the traditional culture of the ethnic groups (Djao 1982). Yet these problems indisputably reside in the institutions and the basic social structures of Canadian society, and are beyond the control of individual immigrant women.

From their experience of immigration, the women have developed some views on adaptation and integration.³ First, an almost unanimous opinion is that the government has responsibility to the immigrant women in helping them adapt to their new society. This means establishing statutory services, such as providing information on basic services and resources, and ensuring that quality ESL classes are available and accessible to all who need them. Some of the IAS programmes funded by "soft money" are simply not adequately meeting the needs of the women.

Second, the women recommend establishing in the major cities a visible, physical space, to be known as the Immigrant Women's Resource Centre (to be referred to as IWRC). The Centre would be the locus of services, an office and a meeting place.

Third, while there is near universal agreement on government responsibility for the immigrant women, there is some difference among the women as to how that responsibility should be discharged: only as funding or as a special government branch or department. The majority of the women prefer the former. They are quite emphatic about the point that, with government funding, the IWRC should be staffed and run by immigrant women who have been in Canada longer. Initially the Centre would be mainly concerned with settlement and adaptation programmes (ESL classes, interpretation and translation, housing, pre-employment services, networking, one-to-one support, child care, etc.). But as the Centre grew in strength and resources, it would, with the help of other organizations and agencies, take

on the tasks of advocacy and social-political action to deal with the long-standing problems of systemic discrimination.

While the immigrant women want to act in their own interests, they are virtually voiceless in Canadian society. There are situational and structural reasons for their silence. In the typical immigrant family, the priorities are as follows. First comes the overriding question of making a living, which means English lessons and a job for the primary wage earner, usually the husband. Very often, while the men are taking full-time English training, the women support the family by working in menial jobs. Then come the questions of schooling and health care for the children. The immigrant women in all of this are busily helping other members of the family to meet their physical and emotional needs. It is usually three or four years after immigration that some women begin to think about their own needs. Some of them may then try to take action to meet those needs. By putting the needs of the other family members first, the immigrant women suffer the human cost of immigration in isolation and silence.

Immigrant women, because of their work in the job ghetto and in the home and, in many cases, because of their lack of knowledge of English, are very isolated. While they may meet other immigrant women of their ethnic background, they lack important resources, such as time, language skills, money, information and energy. Thus, they are unable to organize into a viable action group to articulate their needs. Their lack of resources, poverty, and the subsequent absence of mobilization is too often interpreted by government officials, social service workers, and even some social action organizations and women's interest groups, as apathy on the part of the immigrant women.

IMMIGRANT AID SOCIETIES AND IMMIGRANT WOMEN

While the demand of the Saskatchewan immigrant women for a resource centre to be run by themselves may have been "delayed," it may also appear to be redundant. What the women are asking for seems to be a duplicate of the existing IAS. Wouldn't an immigrant women's resource centre be another voluntary service organization? One already exists in the form of a government-funded Immigrant Aid Society. The critics of the IWRC would argue that, while the IAS services for the women are admittedly meager, the problem is a lack of funding. However, from the women's viewpoint, the matter is more than a question of funding. Rather, it centres on the very *raison d'être* of the IAS: whether the primary goal is to meet the needs of the immigrant women, or to teach them the values and norms of the Canadian way of life. The women's specific demand, a resource centre to be run by themselves, can only be understood against the backdrop of their experience with the IAS.

The history of Immigrant Aid Societies varies from place to place. In some cases, the immigrants themselves struggled fiercely just to have their voice heard. In other places, the efforts of service workers seemed to be the strongest determining factor. In yet other cases, the "voluntary" organizations were virtually the creations of some select "volunteer" citizens at the instigation of government officials. Thus, while

diverse and even opposing forces may all work for the introduction of a programme, they do not exert an equal amount of influence on subsequent programming. Nor is the development of any policy, programme or service a simple and clear-cut process. In the case of the Immigrant Aid Societies in Saskatchewan, the input of the immigrant population is limited, and that of the women is even more limited.

As we have seen, only a small minority of immigrant women have found the IAS helpful in providing the needed information on settlement. This is due in part to the fact that the IAS have not reached them. But those women who had contact with the IAS and found them wanting have one serious criticism: the people at the IAS do not understand their needs and concerns. The following discussion of one IAS in Saskatchewan will clarify how the dissatisfaction of the immigrant women has come about.

This one IAS, to be known as The Society, is chosen for discussion not simply because of my personal involvement in it,⁴ but mainly because there is documentation on this society, including an evaluation study report (see Currie 1982; Chan 1983a; 1983b). No assertion is made here that what is said about this IAS can be generalized to the other two IAS in Saskatchewan, and certainly not to any IAS outside the province. However, the majority of immigrant women from all over Saskatchewan who attended the Saskatoon workshop in April 1984 expressed considerable consensus on their experiences of various IAS.

The Society was established in 1980. As a typical government-funded voluntary service organization,⁵ it has a board of directors, employed staff, and volunteers involved in direct service. As a rule, the board members are volunteers. But some serve on the board because of their occupation as human service workers in various capacities. At different times, the board has had one city council alderman, staff of the community college, YWCA staff, ESL teachers, university professors, non-immigrant homemakers, and members of ethnic associations. At no time do immigrants of visible minorities, men and women together, make up the majority of the board.

The three key paid positions are the executive director, the settlement officer and the programme coordinator. These positions have never been filled by immigrants of visible minorities, although there was heavy staff turnover in the first year. Immigrant women are hired as outreach workers whose positions are funded by special, short-term grants. As a result, these women's employment at The Society has been intermittent. The outreach workers also act as interpreters and translators.

Most of the volunteers are teachers and tutors in the ESL programme. Others are involved in settlement services, social/recreational activities sponsored by The Society, and the administration of The Society. There are a few immigrant women among the volunteers.

As can be seen, the immigrant women have little opportunity and influence in the initiation and implementation of the programmes of The Society. They come to The Society mainly as clients. In that capacity, they have things done *to* or *for* them; they are passive recipients. The disjunction between the needs of the immi-

grant women and the activities of The Society, reflecting its lack of understanding of the women's concerns, can best be seen by recounting the experiences of the immigrant women:

(1) In 1982 one non-white board member, expressing the concerns of unemployed immigrants, proposed that The Society initiate a pre-employment programme: preparing a résumé, conducting a job search, preparing for an interview, etc. The proposal was enthusiastically supported by two immigrant board members (one Indo-chinese man and one Latin American woman) and endorsed by the programme committee of the board. But the programme was never implemented because of the reluctance of the staff to adapt existing programming to the pressing needs of the immigrants. Some time later, a crafts programme (macramé, pottery, etc.) was established for the immigrant women. One explanation of this course of action is that the majority of the board members, not being immigrants, did not see the matter as urgent or the behaviour of the staff as objectionable.

(2) In an evaluation study of The Society, conducted in 1982, evidence emerged of important differences between the views of the board members and of the staff on the objectives of The Society. It was found that the board members were more likely than staff to be aware that the long-term goals included advocacy and social action for change. The board members also stressed changing government policy in the areas of employment and social services, as well as provision of resources to combat discrimination, in such ways as working with prospective employers. The staff, by contrast, tended to view the long-term goals of The Society in terms of "community awareness" or "furthering the Canadian policy of multi-culturalism" (Currie 1982, 50). The board members seemed to have keener sensitivity to the concerns of the immigrants and greater understanding of the structural barriers faced by the immigrants. There was no complete agreement among the board members as to the importance of each goal. But the heightened awareness of the immigrants' plight was presented by the board members who belonged to the visible minorities.

The evaluation study found that very few volunteers in direct service were able to specify the goals and objectives of The Society, perhaps due to the lack of organizational effort or strategy in the area of volunteer recruitment and training (Currie 1982).

(3) Notable among the objectives of The Society were those relating to public awareness and public relations, and advocacy for change. In the evaluation study report, it was found that:

Public Awareness and Public Relations

Liaison with the broader community appears to be dormant. Although many singular efforts have been made, an overall strategy has not emerged. One question which seems unresolved in the minds of Open Door workers is the degree of public visibility which [The Society] should maintain. Some feel that the cost of increased visibility can include blatant racist criticism or jeopardy of community funding. Social research indicates that recent economic factors may be the cause of more overt community criticism of agencies like [The Society]. If this is true, one of the most important issues for [The Society]

to deal with in the immediate future may be the improvement of anti-racist education to the public at large.

Advocacy for Change

Despite its inclusion in [The Society] mandate, to date there is no evidence the [The Society] has been a public advocate for political/legal/social change (Currie 1982, 75-76).

As late as 1984, the view taken by the staff, when queried by the immigrant women conducting the needs assessment study, was that The Society would not be engaged in advocacy/social action and public education on discrimination, because such activities would only provoke a backlash against the minority groups. Such an attitude would destroy any credibility of The Society in the eyes of many immigrant women.

(4) On the issue of English language training, the immigrant women want equal treatment with the (male) primary wage earners. What the women have at present is second-rate training at The Society. The Society could continue to deliver the volunteer-run, part-time English classes while *at the same time* helping the women to fight for equality in language training. While half a loaf is better than no bread at all, the second-rate training by itself, without the accompanying demand for equal treatment, in fact legitimizes and institutionalizes inequality. This is what The Society seems to be doing, in the eyes of the immigrant women. They see the ESL and tutoring services at The Society as a pacifier for them.

(5) The immigrant women feel deep frustration with the inability of the service providers (staff and volunteers) to empathize with them, and with the tendency of the service providers to individualize their concerns or to attribute their problems to their ethnic culture. The women themselves, however, see many of their problems as residing in the structures and institutions of the society, as was found by the researchers of the needs assessment study (Immigrant Women of Saskatchewan 1985). Beginning with the lack of information on basic resources in society, the problems are the barriers they have to surmount to participate in mainstream society.

(6) While The Society fails to initiate activities deemed most important and urgent by the immigrant women, it appears to pursue one function quite earnestly, that is, acculturating the newcomers. This process includes inculcating in the immigrants the norms and values of the host society. At times, it even includes teaching the dominant prejudices in society. One immigrant woman was told at The Society to avoid a certain street because there were too many drunken Indians. The crafts programme for the immigrant women has a recreational aspect. But it also certainly reinforces in the women the message of the prevailing ideology: women should stay home and be occupied with handiwork.

The persistent unwillingness of The Society to tackle the structural barriers the immigrant women face leaves them disillusioned, frustrated and distrustful. The message they get is the view of the dominant groups of the society: immigrant women must adapt, adjust and suffer injustice because the social structures and institutions will not change. It is in response to this set of conditions that the immigrant women want to have their own resource centre.

THE DIALECTICAL PROCESS OF SOCIAL POLICY

The immigrant women's existing situation, their reaction to the IAS and their demands for an IWRC, can be explained in terms of the theory of the welfare state developed by such writers as Ian Gough (1978; 1979; and Doyal & Gough 1984), and Corrigan and Leonard (1978). According to this theory, the phenomenon of the welfare state is contradictory in both its origin and impact and, therefore, the development of social policy is a dialectical process.⁶ The state in the capitalist society, while generally acting in the interest of the capitalist class, could be relatively autonomous in establishing programmes beneficial to the subordinate exploited classes and thus ensuring the long-term stability of the social order. On the other hand, the subordinate classes experience exploitation and oppression, and they strive and agitate for reforms and programmes to alleviate their misery. Thus, any particular social policy could have diverse and, quite often, opposing sources. Any particular welfare programme could be the result of both the action of the state "to play fair" with the subordinate classes, and the struggles of the subordinate classes. In other words, social policy, or a specific welfare programme, embodies the unity opposite. Similarly, the welfare state — itself a conglomerate of all kinds of social legislation, programmes and services — can be seen as the unity of opposing tendencies.

Social policy is also contradictory in its consequences, which is not surprising if its dual causality is taken into consideration. On the one hand, the policy or welfare programme confers a social benefit to the consumer. On the other hand, the welfare state, partly due to its fiscal problems and partly due to its overall function to maintain social harmony, provides inadequate services and structures the programme in such a way as to elicit certain behaviour from the consumer. The situation of a social policy producing contradictory impact may be likened to the division of a unity into opposites.

The development of government-funded services for immigrant women can be explained in terms of the dialectical process of social policy. Government funding here refers to federal funding of statutory services, as well as both federal and provincial funding (from various departments) to Immigrant Aid Societies.

The influx of immigrants in the 1960s and 1970s was allowed mainly because of the demand in Canada for an expanded labour force of varying levels of skills. In the 1970s, there were also international pressures on Canada, an affluent society, to take in the displaced persons. However, due to social changes in advanced capitalism, the ethnic family and kinship networks could no longer be relied upon to take care of the newcomers. Moreover, the absorption of increasing numbers of non-white, and often non-English speaking, immigrants into English Canada must be managed with care to ensure social peace. In light of these considerations, the government was willing to acquiesce to the demands and pressures of the concerned groups — immigrants, ethnic associations, social service workers, and Third World interest groups — to fund Immigrant Aid Societies as voluntary service organizations.

The influence of the women on programme initiation and development in the IAS is minuscule. Neither do the IAS have any discernible impact on the immigrant women, as shown in the findings of the needs assessment study. However, the

women's demand for a physical space and their desire to run such a resource centre constitutes the beginning of a quest to bring about programmes and services that will better meet their needs. The women's urgency to do something about their subordinate position and to help others who will come after them has developed out of their own painful experience of neglect and frustration. It illustrates the agency aspect in the dialectical process of social policy and, as such, posits an antithesis to the legitimization (social harmony) function of the welfare state. In the ensuing struggle, it could influence programming by enhancing its potential to meet the needs of the immigrant women.

POLICY IMPLICATIONS

In light of the dialectical process of social policy, the task for social policy analysts is to accentuate those aspects of policy development that will enhance the beneficial impact for the immigrant women. Learning from the experience of the immigrant women, at least three issues regarding the IAS can be raised for policy consideration:

- (1) What should be the composition of the voluntary board membership?
- (2) What are the professional standards required of IAS workers?
- (3) What is the implication of government funding?

Participation of Volunteers

Voluntary service organizations such as the IAS allow for the participation of volunteers who could bring with them flexibility and fresh ideas so needed in the social services. But if, as we have seen in the case of The Society, the degree of participation by volunteers from the clientele population is minimal, the services would not be likely to incorporate the perspective of the clientele or to meet its needs.⁷ A prescribed majority representation by immigrants on the board should be a condition for government funding to IAS. At least half of the immigrant board members should be immigrant women.

This is not to say that non-immigrant experts and concerned citizens on the board do not have important contributions to make. But, in making their contributions, they should keep in mind that they are different from immigrants in that they have not been through the process of immigration to Canada.

Another condition for funding should be careful screening and training of volunteers, whether they are to serve on the board or in direct service. Immigrant women find the patronizing and paternalistic volunteers particularly offensive.

Professional Standards

The majority of immigrant women see the IAS as not very helpful and, therefore, irrelevant. Their major complaint is that the staff and, to a lesser degree, the volunteers in direct service do not understand immigrant women's concerns and problems. As we have seen, there is a tendency on the part of the service providers to individualize the issues and problems, and to attribute them to personal or cultural

deficiency. This lack of understanding on the part of the service providers is not simply a matter of poor communication as it is so often described. The matter could perhaps be best analyzed in the context of professional standards.

Professionalism is, of course, itself double-edged. At its very worst, professionalism is a shield behind which the professionals hide from having to relate to the clients as human beings. It can also be a commodity which the professionals trade on the job market to advance their careers, and a tool which they wield to manipulate the clients into submission. However, professionalism sets the standards that must be reached if the clients' needs are really to be met. Real professionalism means skilled and empathetic practice based on a body of knowledge and informed by humane norms and values. At its best, it strives to enhance the clients' ability to choose, through analysis of the situation and presentation of options.

While the IAS workers (and volunteers) need not be social workers in the formal sense (C.S.W. or B.S.W., etc.), nor should they be amateurs equipped with nothing more reliable than their good intentions, or worse still, their paternalism. The IAS workers must have basic skills in communication and counselling. However, insofar as they are dealing predominantly with immigrants of visible minorities, their required professional standards should include a clear understanding of the structural inequality in Canadian society, sensitivity to systemic discrimination, a commitment to maximize choices for the immigrant women in the face of structural barriers, the skills needed for personal advocacy, and the capability of organizing broad-based social action. In all of this, the service workers must be able to see issues and problems from the immigrant women's point of view.

Government Funding

However one might wish to skirt the issue, the reality is that government funding means government control. Control of the voluntary service agency may not be the conscious intention of government employees. But under government funding, the goals, objectives, and specific programmes must be sanctioned by the government, and certain administrative procedures (such as record keeping and funding application) must be followed. In the process of accommodating or incorporating government requirements, a certain amount of the voluntary organization's autonomy is inevitably lost, and often an hierarchical structure is introduced (Ng 1984). The situation is made drastically worse if the paid staff becomes pre-occupied with procuring funding from one year to the next, and administrative routine, to the detriment or neglect of service provision.

IMMIGRANT WOMEN'S RESOURCE CENTRE

The immigrant women see that the government has a responsibility to them. Yet, because of their dissatisfaction with the IAS, they are proposing a resource centre to be funded by the government and run by volunteers and paid staff who are immigrant women. Even if such a resource centre were a possibility, the policy issues raised above still need to be dealt with. Government funding would still mean government interference, to the point of thwarting the most urgent goals of the immi-

grant women. If the board members and staff were in fact immigrant women, what safeguards could be put in place to ensure that the board members would be competent but not patronizing, and that staff would measure up to the professional standards and not be overwhelmingly concerned with job security. In addition, there is the problem of the "creaming effect" to contend with. In similar voluntary service organizations, it is those with better education and higher incomes in the clientele population who become volunteers and paid employees. Those who are in the greatest need of service, the less educated and the poor, are left further behind.

The IWRC is an ideal. Against the existing reality in Saskatchewan at the moment, it is not plausible. An alternative is to change the existing IAS along the lines suggested by the women themselves. However, even the demands that government assume greater responsibility towards the immigrant women and that women assume the leadership roles in the voluntary sector would not be realized without a great deal of mobilization, organization, political action and struggle. But it is in these struggles that social policy is shaped to the benefit of the immigrant women.

SUMMARY AND CONCLUSION

Immigrant women in Canada at present have few social services available to them. They are neglected and discriminated against. The majority rely on informal caring networks for information about the basic services and resources in society. Their contact with the IAS is tenuous and characterized by a lack of confidence.

The theory of the dialectical process of social policy is best able to explain the dual phenomena of, on the one hand, government-funded voluntary service organizations for immigrants, and, on the other, the women's own desire to be more active and self-directing. The latter, however, is also voluntary action, born of women's painful experience of the conditions of immigration and discrimination, sometimes at the hands of other volunteers. The dialectical process between these different kinds of voluntary action, the two opposites, if you will, will influence the form and content of services for the immigrant women.

It is not the suggestion here that all efforts of the voluntary service organizations (the non-immigrant women staff and volunteers) are necessarily suspect. Far from it. Voluntary action is recognized as having the potential to bring about social change, because it could be relatively autonomous, flexible and innovative. The point is emphatically that voluntary action, like all social services, to be beneficial, must begin with the standpoint and the experience of the services' consumers. The services must be led by the social and political action of the women themselves.

Unless this primary condition is met, the government's increasing emphasis on voluntarism, purely for the reason of deficit reduction, can only mean inadequate service or no service at all, as has been the case with the immigrant women.

NOTES

1. Reference is only made to one official language, English, as Saskatchewan is not officially bilingual. The choice of the restricted meaning of "immigrant women" is explained in the report of the needs assessment study of the Immigrant Women of Saskatchewan (1985).
2. The study was conducted through personal interviews with 95 immigrant women in various parts of Saskatchewan, both rural and urban. The interview schedule included fixed-alternative type questions as well as unstructured, open-ended questions. Thus, the interviewees had ample opportunity to express their views and sentiments.
3. These views were expressed by the 95 women who were interviewed for the needs assessment study and by about 60 other immigrant women who attended a workshop in Saskatoon in April 1984.
4. I was on the board of directors in its first year of existence, and have maintained contact with some clients and volunteers of The Society.
5. According to Robichaud's (1985) definition, The Society would not be a truly voluntary organization, as it is almost entirely funded by the governments. It is voluntary in the sense that volunteers also work there.
6. Pemberton's article (1983) is a well attempted critique of the Marxist theory of social policy. But his understanding of dialectics seems to be predominantly influenced by Colletti, and is therefore quite narrow.
7. In the U.S.A., in dealing with the issue of participation by the poor in community action programmes funded under the Economic Opportunity Act, Congress finally declared that, to qualify for funding, the programmes must have at least one-third of the board membership made up of representatives of the population (Curtis and Zurcher 1971). That was, of course, far from adequate.

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NINE

THE ROLE OF THE CLIENT IN POLICY MAKING

Dieter Hoehne

Social policy is the organized attempt of society to supplement individuals' efforts to cope and to provide the goods which individual activities cannot produce. Social policy is directed at a specific segment of society, although it is potentially universal in character. It must correspond to the needs of the clients if it is to be successful. Can the clients' needs be adequately assessed by the professionals who work on behalf of the clients? If not, would it help to integrate the clients into the policy-making process? Does communication between clients, professionals and government agents yield a "better" social policy?

This chapter addresses these questions by analyzing the development of a provincial legal aid plan in Nova Scotia. This particular example of social policy-making was chosen for two reasons. First, the government of Nova Scotia encouraged public input into the policy-making process, asking professionals as well as clients to publicly communicate their ideas. In particular, the government established two committees to initiate and, later, to review the legal aid plan. The deliberations of these committees are examples of communicative policy-making useful in pursuing the questions raised above. Second, the discussion in Nova Scotia centred on two distinct and conceptually different models of legal aid delivery. Participants were polarized on this issue, highlighting the conceptual distance between the clients and the professionals. It is suggested that this conceptual distance, reflecting a basic social distance, is the main reason for the failure of communicative policy-making.

But did communicative policy-making really fail? Is not the fact that Nova Scotia Legal Aid is now (1985) in its fourteenth year rather proof of success? It is not, if

"successful" is defined as "best suited to the needs of the clients as expressed in their own ideas." This chapter shows how far the plan differs from the ideas of the clients.

The basis for the analysis presented here is Juergen Habermas's theory of communicative acting. Using this theory, it is possible to show why communicative policy-making had to fail. It is also possible to identify the requirements which must be met for communicative policy-making to succeed.

The chapter consists of four parts. The first, descriptive part provides data for analysis. It presents a brief sketch of the historical background of legal aid development before describing the events in Nova Scotia. Since it is necessary to have an idea of a "good" legal aid service to evaluate a particular policy, a theoretical model of a legal aid service which most comprehensively meets the needs of the clients is introduced. This model is then used to assess the deficiencies of the Nova Scotia legal aid plan.

The second part outlines the main features of Habermas's theory. In the third part, the theory is applied to the Nova Scotia data. In the conclusion, the requirements to make communicative policy-making possible are discussed.

LEGAL AID DEVELOPMENT IN NOVA SCOTIA

Ever since Henry VII proclaimed the *In Forma Pauperis* Act in 1495, requiring judges to assign counsel to the poor, it has been the "honorific duty" (Cappelletti 1975, 23) of the legal profession to assist the poor in obtaining their rights. In most countries, this individual, private, charity-based legal aid service was succeeded by some form of organized, but still private, legal aid scheme. In Canada, it was the legal profession which first established province-wide organized legal aid services. These services were still based on the traditional notion of professional responsibility as the basis for rendering free legal services to the indigent, although the concept of legal aid itself had changed. Rather than being regarded as a matter of charity, legal services to the poor were considered a right "guaranteed by the force of positive law for all members of a defined class of the poor" (Cappelletti 1975, 23).

When it became obvious that the "organized charity" services of the profession could no longer cope with the increasing number of requests for aid, government-funded programmes were instituted. In 1973, the federal government entered with the provinces a Cost-Sharing Agreement Concerning Matters Related to Legal Aid in Criminal Matters. Because of the divided jurisdiction in the administration of justice, federal monies could only be used against costs incurred in legal aid cases dealing with criminal offences. The federal government hoped, however, that support in criminal legal aid would free provincial funds to be used to finance legal aid in civil matters. The agreement was to enable "those provinces with established legal aid plans to develop more comprehensive programmes in the civil area" (Lang 1974). By 1974, government-funded legal aid services were in operation in all the provinces.¹ In the Territories, legal aid was provided by the Department of Justice under the authority of the Justice Minister as Attorney-General for the Territories.²

After the Second World War the Nova Scotia Barristers' Society (Bar) had followed a suggestion of the Canadian Bar Association and had begun the "creation of legal aid clinics to which persons unable to pay could go for advice" (Council April 30, 1951). These clinics operated only in Halifax. The rest of the province continued to be serviced on the basis of the traditional *pro bono* principle.³

The clinics operated through two panels: the Junior Panel, comprised of the 52 most junior members of the Bar, and the Senior Panel, composed of senior members of the Bar who were to be consulted in more serious cases. The Junior Panel operated a weekly clinic to which potential clients could turn for help. The attending lawyers interviewed the clients and determined the nature of their legal problems. If a problem required more assistance than oral advice, the client had to provide information on his/her financial status. If the person was found eligible for legal aid, s/he was referred to a lawyer's office. The services were provided free of charge.

By the mid-1960s it had become obvious that the voluntary legal aid service could no longer handle the increased case load.⁴ The chairman of the Bar's Legal Aid Committee reported that "the situation was getting completely out of hand" (Council February 17, 1967). During the 1967-68 period "the colossal amount of work done by the Junior Panel . . . averaged for each member per week two criminal cases, as well as eight other cases per week" (Council January 19, 1968). The Bar realized that the limits of the voluntary legal aid system had been reached.

The Bar turned to the provincial government for help. In June 1970, following a request of the Bar, the government established a committee (Cox Committee) with the mandate to "carry out a study regarding the establishment of a comprehensive legal aid system in the Province" (Cox Committee 1971).

The Committee announced its appointment and the dates of its public hearings through the media. Although there was "no lack of publicity" (Cox 1981), Committee chairman A.W. Cox was disappointed by the lack of public interest. The lack of participation in the Cox Committee proceedings was even more remarkable if one considers the fact that the Committee had made attempts to notify everybody it thought would be interested in legal aid.⁵

When the Committee started its investigations into the problem of legal aid, it had three different models of legal aid delivery systems available as reference points for its reflections: the *judicare* model, the neighbourhood law office (NLO) or staff lawyer model, and the Public Defender model.

The characteristics of the *judicare* model are summarized by Roland Penner:

In essence, (*judicare*) provide(s) central government funding for a plan administered by the self-governing Law Society and delivered by solicitors in private practice on a fee-for-service basis. It may be said that the essential aspects of *judicare* are: bar controlled, bar operated, but government financed. (Penner 1977, 5)

The NLO model became prominent in the United States during President Johnson's War on Poverty (Garth 1980). Its main features are "legal services mainly (provided) by way of the salaried staff model in which the bulk of services are provided by salaried lawyers employed in community clinics . . ." (Justice Information

Report 1981). In addition to being a different model of legal aid service delivery, the NLO model is based on the concept of poverty law. This concept sees the lawyer as advocate of the poor, concerned not only with legal representation but also with public legal education and law reform. In its extreme, this approach conceives of law as means of social change and of legal aid as a social policy.

In contrast, the concept underlying the judicare model conceives of legal aid as part of the administration of justice. The Public Defender model, which provides the accused with a defender assigned by the judge and paid out of public funds, cannot be clearly ascribed to either of these two concepts. The institution of Public Defender would fit both concepts.

Figure 9.1 shows the three levels at which a legal aid debate can be led: the conceptual, the substantive, and the technical levels. The most comprehensive legal aid model, with respect to the clients' interests, would be the one combining all the poverty law elements contained in Figure 9.1. The Nova Scotia legal aid plan actually adopted must be assessed in comparison with this model.

The Legal Aid Debate

Figure 9.2 shows the content of the debate as represented in the briefs submitted to the Cox Committee. Figure 9.2 focuses on those elements of legal aid favoured by the participants in the debate.

Figure 9.2

Per Cent of Participants Favouring Specific Elements of Legal Aid
(Cox Committee)

ELEMENTS OF LEGAL AID	Legal Profession (47%)	Welfare Agencies (40%)	Clients (11%)
Judicare	71%	22%	20%
Staff Lawyer	29%	61%	40%
Means Test	14%	5%	20%
Needs Test	5%	6%	—
Group Representation	5%	17%	—
Public Legal Education	5%	33%	40%

Not all submissions mentioned all elements. Hence, figures do not always add up to 100%.

PARTICIPANTS ($N = 45$)

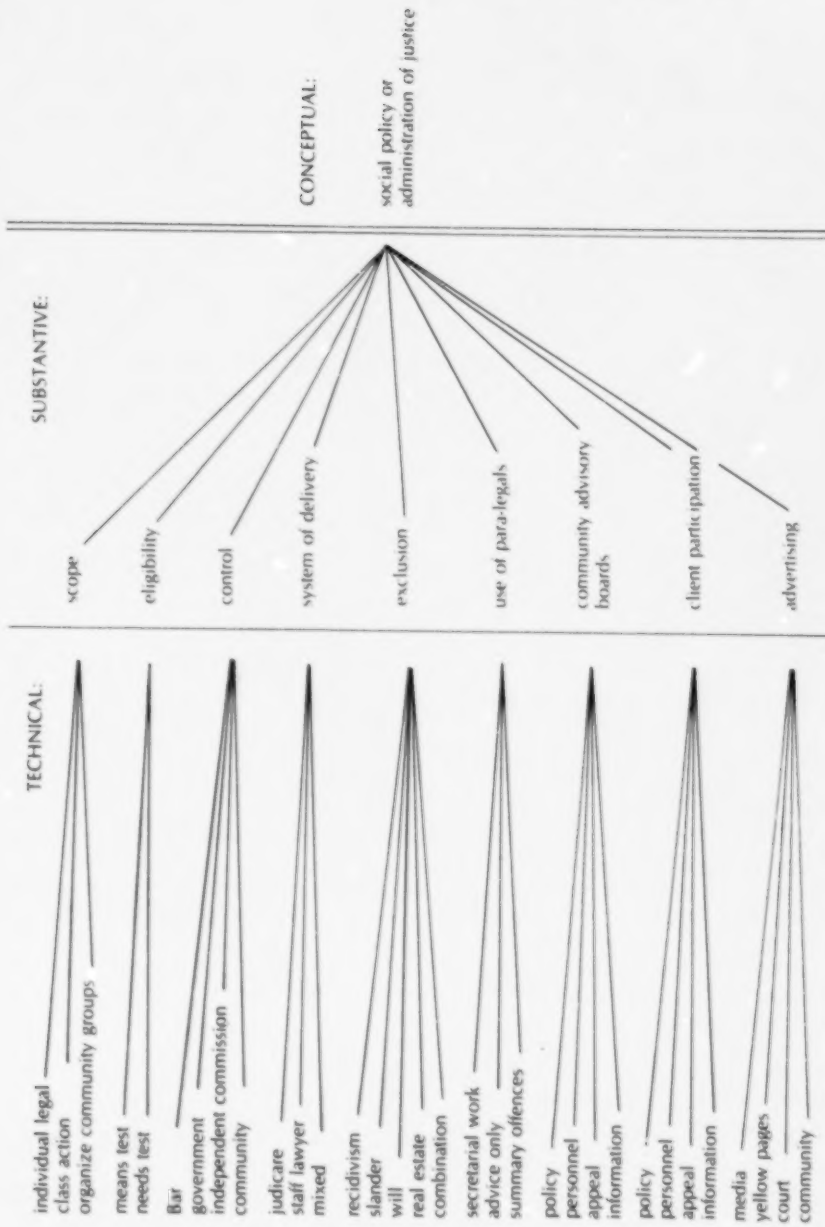


Figure 9.1
Three Levels of Legal Aid Policy Debate

Two things are apparent when analyzing the submissions to the Cox Committee. The first is the nearly complete absence of direct representation by the poor. In the late 1960s, low-income groups across the country had started to become organized and to defend their interests. Why, then, did they not participate in the hearings of the Cox Committee?

The answer lies in the nature of the issue under consideration. Low-income groups had engaged in struggles for better housing and improved living conditions, issues of immediate concern to them. Legal aid is only potentially relevant for most of the people. By the same token, the government agencies administering the fate of the low-income population have a clear idea of the advantages or disadvantages of different legal aid models and of the importance of legal aid services in general. Thus their submissions were dominant. As a result, the bulk of "public" input was not public at all but rather some form of internal government agencies' exchange.

The second thing is the clear difference between the positions held by the lawyers and those held by the representatives of the potential clients. The legal profession basically opted for *judicare* whereas the submissions representing the poor favoured the NLO model. The Public Defender model was not mentioned at all, but reference was made to a universal legal aid scheme on the *medicare* model. The difference between the two groups was based on different underlying conceptions about the nature of legal aid.

Whereas the debate for the legal profession boiled down to a fight for retaining the principle of "free choice of counsel" as a hallmark of professional independence, the debate was perceived by those representing the poor as a struggle for a new social policy. In the few cases where the legal profession talked about legal aid in a social context, it was to stress the negative effect of an insufficient legal aid service on the socialization of those already alienated (Kings County Barristers Society 1970, 2). In line with their "social policy" perspective, the social service agencies strongly emphasized the need for extending legal aid coverage to family and juvenile law.

In January 1971 the Cox Committee submitted its report to the Attorney General. After careful consideration of the three models outlined above, the Committee stated the need for "as comprehensive a plan of legal aid as available financial resources will permit" (Cox Committee 1971) and called for the establishment of a mixed system with a heavy emphasis on the *judicare* model. It also recommended full financing of the programme by the provincial government and assigned administrative responsibility for it to the Bar. After the Legislative Assembly had passed Bill 67, an Act Respecting Planning for Legal Aid, the government signed an agreement with the Bar detailing the particulars of the new system. Contrary to the recommendations of the Committee, the agreement established a predominantly NLO system in the province.

After a four-year trial period, Nova Scotia Legal Aid had expanded considerably and was up for review.⁶ The Attorney-General appointed an Advisory Committee on Legal Aid (Gunn Committee) in March 1975. Its mandate was "to determine the impact of the present legal aid system upon the population of the province" (Gunn Committee 1976, 1).

In the beginning, public attendance at the hearings was disappointing, so the Committee sought contact with the potential clients and their representatives. As a result, client representation was much better than it had been during the Cox Committee hearings.⁷

Figure 9.3 shows the content of the debate as represented in the briefs submitted to the Gunn Committee. Figure 9.3 focuses on those elements of legal aid favoured by the participants in the debate.

Figure 9.3
Per Cent of Participants Favouring Specific Elements of Legal Aid
(Gunn Committee)

ELEMENTS OF LEGAL AID	Legal Profession (34%)	Welfare Agencies (10%)	Clients (55%)
Judicare	20%	67%	—
Staff Lawyer	50%	33%	100%
Mixed System	20%	—	—
Means Test	—	—	6%
Needs Test	10%	—	—
Para-legals	30%	—	69%
Group Representation	—	—	19%
Public Legal Education	20%	—	75%
Law Reform	10%	—	38%
Class Action	—	—	19%
Organize Community Groups	—	—	25%
Community Control of Service	—	—	38%

Not all submissions mentioned all elements. Hence, figures do not always add up to 100%.

PARTICIPANTS ($N = 29$)

In 1971, members of the legal profession had communicated with the professionals from social service agencies. In 1975, the communication took place between members of the legal profession and organizations of potential clients. The briefs show that members of the legal profession were still arguing in favour of judicare, by opting for a mixed system in which the rural areas of Nova Scotia would be serviced by the judicare system. The other participants had abandoned the conceptual level of the debate and had concentrated on substantive and technical questions. The clients' organizations all favoured the NLO model. The trial run of Nova Scotia Legal Aid had proven so successful with the concerned public that none of the recipients of legal aid, or of those working for them, even contemplated changing the structure of the programme.

Two aspects stand out in the submissions from the low-income groups. First, these groups called strongly for the use of para-legals⁸ within Nova Scotia Legal Aid. Second, they argued for an increase in public legal education. As a result of their experience with NSLA, low-income groups called for a change in control over the service, favouring either an independent body as control agency or direct community control. As an additional requirement for effective legal aid service, groups recommended "increased availability of Legal Aid for Community Groups."⁹ Those in favour of NLOs had more in mind than improving the technical efficiency of the provincial legal aid service. They wanted to fully realize the social policy of legal aid promised in the 1971 agreement, but never accomplished.

When the Gunn Report was presented to the public, it was apparent that the existing structure of NSLA was not to be changed. The Report recommended:

(4) That the present approach to delivering legal services - namely lawyers employed by the Provincial Government on a full-time basis in community offices - continue as the principal method for delivering legal aid in Nova Scotia.

(5) That the *judicare* method for delivering legal aid be adopted only in those situations where it appears: (a) such a system can operate more effectively and efficiently; (b) the current legal aid system cannot function adequately in the interests of justice (Gunn Committee 1976: 68).

The pro-NLO thrust of the Report's recommendations was further supported by explicit advice that Dalhousie Legal Aid Services (DLAS), a university-based NLO, also be funded by the government and "work in close liaison with the Nova Scotia Legal Aid Commission" (Gunn Committee 1976, 67). This commission was to be created as a new independent control and administrative organ of the system. The Cox Report had ignored DLAS and thus facilitated the development of a dual legal aid system in the province. The recommendations of the Gunn Committee provided an opportunity to integrate the two services so that each could benefit from the other. In March 1977 the Legislative Assembly passed Bill 20, an Act re Legal Aid. The Act established a comprehensive legal aid plan, financed by the government and administered by an independent commission.

Did communicative policy-making result in a better legal aid plan for the clients? A comparison of the stipulations of Bill 20 and the ideal model (Figure 9.1) will provide part of the answer. Figure 9.4 contrasts key elements of Figure 9.1 with those of Bill 20.

Figure 9.4
Comparison of Bill 20 and Model Legal Aid Plan

Model	Bill No. 20
individual legal aid	×
class action*	
organize community groups*	
means test	×
control of service through community*	
staff lawyers*	×
use of para-legals*	
community advisory boards*	× **
client	participation*
*elements which operationalize poverty law concept	
**only element of Bill 20 which was never implemented	

Figure 9.4 reveals that there is no cut and dried answer to the question of whether Bill 20 is "better" than the traditional legal aid service. On the one hand, Bill 20 does contain several elements of poverty law. On the other hand, it does not contain any one of those elements of poverty law which actually strengthen the position of the clients by handing over responsibility to them.

Bill 20 is pro-client only in those areas in which this attitude does not upset the established client-professional relationship. The optimal legal aid service, from the clients' perspective, would be one that gives the clients control over its direction and procedure. Bill 20 does not even come close to this ideal.

The Theory of Communicative Acting

When people participate, they interact and communicate. Participation is influenced by requirements of the political system mediated through institutional and individual characteristics, as shown in Figure 9.5.

Figure 9.5
Determinants of Participation

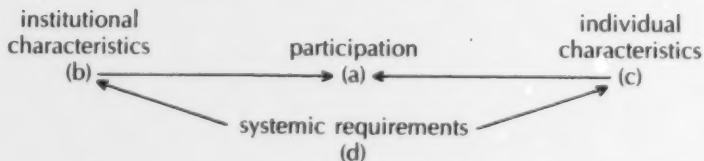


Figure 9.5 illustrates the relation of the three determinants of participation — the institutional characteristics, the individual characteristics, and the systemic requirements. The Figure shows that participation cannot be analyzed in a comprehensive way unless one conceives (b) → (a) and (c) → (a) as spurious relations.

Since individuals constitute their social reality through communicative actions, and since the structures of interaction are shaped by the requirements of the political system, these requirements constitute social reality. The theory of communicative acting developed by Habermas provides categories permitting analysis of the effect of the political system's requirements on individual action, that is, of the way in which these requirements constitute social reality. Since the theory accommodates the complex relations expressed in Figure 9.5, it avoids the danger of focusing on spurious relations.

In the following pages the main elements of Habermas' argument will be briefly described to provide the basis for the subsequent analysis.

Habermas describes his ideal model of interaction, based on the assumption that all participants are equally able to perform the required actions, in the following way:

(that) kind of interaction in which all the participants mutually adjust their individual plans of action and then pursue their illocutionary goals without restriction I called communicative acting (Habermas 1981, 1: 395).¹⁰

In addition, communicative acting depends on a general consensus established through a mutual accepting of "validity claims."

Habermas asserts that four such primordial claims can be identified: first, the speakers' utterances can be understood by others; second, that the knowledge or propositions which speakers are attempting to communicate are "true"; third, that speakers are in mutual agreement concerning the normative values which they establish and within whose boundaries they speak and act; and finally, that speakers are "authentic," that is, sincere in speaking and therefore trustworthy (Keane 1982, 23).

Communicative acting contributes to the reproduction of the social world in three ways.

With respect to the functional aspect of communication communicative acting maintains tradition and provides renewal of cultural knowledge; with respect to the aspect of coordinating actions communicative acting generates social integration as well as solidarity; finally, with respect to the aspect of socialization communicative acting is constitutive in the development of personal identities (Habermas 1981, 2: 209).

It is quite obvious that it is nearly impossible to find a pure version of this model in reality. The value of the model lies in its capacity to serve as a reference point for the evaluation of deficient situations. Contrasting the model with reality, one can trace the factors deforming the interaction process. Analysis of "distorted communication as the mutilation or the dumbfounding of potentially free speaking and acting subjects" (Keane 1982, 30) becomes possible.

An individual communicates with reference to three formal concepts of the world. These three concepts are (1) the objective world, (2) the social world, and (3) the

subjective world.¹¹ With respect to communicative acting one can say that:

(each) sentence is situated in relation to external reality (the world of perceived and potentially manipulatable objects), normative reality (the realm of socially recognized expectations, values, rules, etc.) and inner reality (the arena of intentions) (Held 1980, 334).

Even if in actual communication the individual refers only to one of those concepts, the others are always implicitly involved as well. Hence, one can say that an individual who accepts a communicated statement referring to one of the concepts, implicitly accepts the other concepts at the same time.

(Speaker) and listener use the system of the three world concepts as the realm of interpretation within which they collectively produce definitions of the context of their action *Comprehension* (Verstaendigung) means agreement of the communicators on the validity of a proposition; *consensus* (Einverstaendnis) means the intersubjective acknowledgement of the validity claim which the speaker raises for the proposition Thus the rule exists in communicative acting that a listener who agrees to a specific validity claim automatically agrees to the other two, implicitly raised validity claims; failing that the listener has to declare dissent (Habermas 1981, 2: 184).

Translated into practical political situations, this means that an individual who agrees to participate in the political process implicitly accepts the official version of the social and objective world perceived by the other participants. Participation becomes identical to legitimation.

Constitutive for any communicative acting is the "life world" (Lebenswelt) which the communicating individuals share. "(Life world) is the stock of explanatory strategies which are inherited through culture and organized through language" (Habermas 1981, 2: 189). Life world is the "cognitive frame of reference" (Habermas 1981, 2: 207) required for understanding which the communicating actors have in common.

(The life world) is constitutive for understanding as *such*, whereas the formal concepts of the world (objective, social, subjective) are the frame of reference for those things about which understanding is possible: speaker and listener agree on the basis of their shared life world on something within the objective, social, or subjective world (Habermas 1981, 2: 182).

Habermas points out that the specific content of the life world depends on the stage of social evolution of the respective society. The result of social evolution is a progressive separation of life world and social system.

(The) life world (which) initially covers all the aspects which a barely differentiated social system also covers, becomes more and more one subsystem among others. In this process the social structures which generate social integration become more and more separated from the systemic mechanisms. Modern societies . . . reach a level of system differentiation at which organizations that have grown autonomous (market and state) are related to each other via non-linguistic media or communication (money and power). The

systemic mechanisms direct social interactions which are practically dissociated from norms and values . . . (Habermas 1981, 2: 230).

Those non-linguistically-directed systems of acting which are "directed via exchange and power relations" (Habermas 1981, 2: 231) gain, in the eyes of the individuals, "natural" qualities, that is, they move from the social into the objective world.

In this process, they become removed from the sphere of influence of the communicatively acting individuals. A society's specific stage of development is reflected in the life world of the individual through externalizing systems of interacting. Since the life world is constitutive for communicative acting, the potential of this form of acting is determined by the society's stages of development. In general, the influence of social formation on the life world results in a structural violence which:

dominates the form of intersubjectivity of potential comprehension without becoming apparent. Structural violence is practiced in the form of a systematic limitation of communication; it is part of the formal conditions of communication in a way that prejudices in a typical manner the relation of objective, social and subjective world for the communicating parties (Habermas 1981, 2: 278).

This notion of structural violence captures the essence of Figure 9.5. The limitations Habermas discusses can be found in institutions as well as in individuals and constitute part of their respective characteristics. In the following pages, the theory of communicative acting will be applied to the participatory element of legal aid development in Nova Scotia. It will be shown how structural violence shaped policy development.

POLICY MAKING AS COMMUNICATIVE ACTING

The categories are not mutually exclusive and the examples listed are not exhaustive. Although all the elements in Figure 9.6 were involved in legal aid development, analysis will focus on the two situations which most closely represented a communicative situation and in which public participation was most visible — the deliberations of the Cox and the Gunn Committees. The analysis investigates the structural limitations which governed the client-government interaction and assesses the importance of "life world" as an analytical category.

Institutional Limitations

Advisory committees like the Cox and the Gunn Committees are temporal organizational structures designed to gather information and formulate recommendations on specific policy issues. Their main limitation, in interactionist terms, is their lack of any decision-making power.

(The) condition for a grounded consensus is a situation in which there is mutual understanding between participants, equal chances to select and employ speech acts, recognition of the legitimacy of each to participate in the dialogue as an autonomous and equal partner . . . (Held 1980, 343).

Figure 9.6
Typology of Participation

institutions individuals	individual actor	temporary organizational structure	permanent organizational structure
individual actor	(1) letter to MP	(2) testimony to committee	(3) client relation
temporary group (structured/non-structured)	(4) letter; invitation to speak	(5) present brief; get member on committee	(6) lobbying
permanent group	(7) letter; invitation to speak; offer to join	(8) present brief; get member on committee	(9) lobbying

The public is interacting with a political body which can influence the decision-making process only in a very limited way. Neither the public nor the Committees are autonomous. The consequences of understanding reached through the communication are not under the control of the interacting parties. After considering the recommendations of the Cox Committee, the government adopted a policy which was not at all in keeping with the Committee's suggestions.

Another institutional limitation compounded the effect of the one described above. The Cox Committee:

was composed of members of the Nova Scotia Barristers' Society and representatives from Dalhousie Law School, the Department of Public Welfare, the Department of Finance and Economics of the Provincial government and the Director of the present Legal Aid program in Nova Scotia who acted as Secretary of the Committee (Cox Committee 1971, 1).

The potential clients and their organizations were not represented on the Committee, a fact that constitutes a serious limitation (5) in Figure 9.6. The same limitations affected the Gunn Committee, which consisted of a judge, a lawyer, and the provincial Director of Social Research and Planning.¹²

Individual Limitations

In 1976, a study conducted in Halifax, Nova Scotia, investigated the possibilities of participation of poor people in social policy making and municipal affairs. The "Nulife" study, as it was called, succinctly summarized those restrictions on an individual's potential to participate resulting from the socialization process.

We find that (the poor) are not aware of activities, programs and services available to them. They are isolated structurally and psychologically from the community in which they live . . . The low-income groups hold . . . an attitude of alienation (Department of Public Welfare 1970, 31).

These phenomena are only surface manifestations of personality characteristics which low-income people share and which are the result of a complex interaction of socialization factors in the socio-economic environment.¹³ In addition, low-income groups are restricted in their use of the very medium of communication. As socio-linguistic research has shown, people from working and lower classes use the "restricted code" (Bernstein 1964; Oeverman 1972). People who speak the restricted code use short, grammatically simple sentences. They master only a limited set of speech patterns, which they use in monotonous repetition. In contrast, members of the middle and upper classes master the "elaborate code," consisting of very complex grammatical structures and an immense variety of speech patterns. Mastery of the elaborate code includes mastery of the restricted code. The restricted code limits an individual's ability to successfully participate in the communicative setting of the Committee hearings, which are dominated by those speaking the elaborate code.

Furthermore, the linguistic code directly influences the life world. Linguistic competence is related to the development of intellectual competence. Deficiencies in the former result in restrictions on the cognitive development of the individual (Piaget 1969). As the life world is "the stock of explanatory strategies inherited through culture and organized through language" (Habermas 1981, 2: 189), the linguistic code affects an individual's capacity to orient himself/herself in the world, or, in political terms, linguistic competence is related to the political and social autonomy of an individual vis-a-vis his/her life world. Thus, the potential legal aid clients were doubly handicapped by their language. They lacked the necessary communicative skills and their explanatory strategies (life world) were not adequate to the task at hand.

Life World and Communication

Communicative acting requires a life world shared collectively by the participants in the communication. The distance between the life world of the potential clients and the other participants in the Committees' deliberations, more than any other of the limitations described, is responsible for the failure of the Committees' deliberations as a communicative event. Had the clients accepted the life world of the other participants, communicative acting on the basis of a shared life world would have been possible. This, however, would have required that the clients accepted the other participants' concept of "poverty," "content of legal aid," "adequate representation in court" and the like. It would have meant they had to abandon

Figure 9.7
Approval Rate of Participants for Selected Items

COX COMMITTEE	Legal Profession (N = 21)	Welfare Agencies (N = 12)	Clients' Organization (N = 3)
staff lawyer	19	58	33
needs test	5	25	—
class action	—	—	—
organize groups	5	—	—
community control	—	—	—
para-legals			
law reform			
public legal education			

GUNN COMMITTEE	Legal Profession (N = 10)	Welfare Agencies (N = 3)	Clients' Organization (N = 16)
staff lawyer	50	33	100
needs test	10	—	69*
class action	—	—	19
organize groups	—	—	25
community control	—	—	38
para-legals	30	—	69
law reform	10	—	38
public legal education	20	—	75

*submissions to the Gunn Committee indicated that clients' groups wanted new eligibility criteria, thus expressing dissatisfaction with established, means-oriented practice

their own concept of legal aid as an instrument of social change. The existing differences between the concepts of legal aid can be seen in Figure 9.7.

Figure 9.7 represents the three groups of participants' approval rate for selected poverty-law items. In 1971, the clients' interests were represented by members of the government's social service and welfare agencies. The staff lawyer system was the only poverty-law item which the clients' representatives introduced into the discussion. It stood against the judicare model, a reflection of the "life world" of the legal professionals.

The breakdown of the Gunn Committee submissions reveals some interesting facts. First, the clients are representing themselves. The "life worlds" of the legal professionals and of the clients are now shaping the communication. Second, the

clients' concept of legal aid is the most complex and comprehensive of all three involved in the process of communicative policy-making. Hence, if clients are represented, as they were in 1971, by government agencies, their interests are only protected to the degree they coincide with the agency's concept of the problem at hand. This fact is particularly evident in the case of NSLA development. Neither in 1971, nor in 1975, did a government agency suggest any of the items which would contribute to clients' control over service. Third, with the exception of the control items of the poverty law concept, there is a visible approximation between the concept of the legal profession and that of the clients.

If one compares the scope of concepts presented to the Committees, itself already considerably smaller than the scope of the comprehensive model (Figure 9.1), with the yet more limited scope of the Committee's recommendations, the filtering function of the Committees in policy-making becomes evident (Chapin and Deneau 1978). The 24 recommendations contained in the Gunn Report, for example, were selected from 61 policy items the Committee had distilled from all of the presentations it had received. Selection criteria were the political considerations of the Committee members. They felt that more recommendations would not be dealt with by the government (Gunn 1981). Since the government was represented on the Committee, the more contentious items were not highlighted in the recommendations. The Committee influenced the policy-making process by selecting the options which formed the basis for the government's decisions.

The process which generated Nova Scotia's legal aid policy unfolded within the confines of these institutional and individual limitations. These limitations, in turn, reflect systemic requirements. Hence, one can say that the substance of legal aid policy in Nova Scotia did not result from the efforts of competing groups alone, but more simply reflected the invisible power of economic relations. The very process of this policy's generation provided the correspondence of policy substance and systemic requirements through a specific form of distorted communication.¹⁴

CONCLUSION

The analysis of communicative policy-making in the case of legal aid in Nova Scotia has shown that client participation alone does not result in policies adequate to the clients' needs. Several steps must be taken to move from communication under the influence of "structural violence" to communicative acting.

The first step, and the one easiest to achieve, is to educate the clients. The immediate goal of client education is to increase their level of communicative proficiency to that of the other participants. However, if client education were limited to this goal, the result would not be an autonomous client but a client whose life world would be dominated by the use of language by the other participants' life world.

To prevent this outcome of client education, education must be understood as a mutual undertaking with consequences for all participants. In the case of legal aid development in Nova Scotia, it would have been as necessary for the legal profession to learn to understand the life world of the clients as it had been for the clients

to increase their level of communicative proficiency. Successful client education, hence, can only take place in the context of participants' education. Yet, participants' education itself can only really work if it is aimed at sharing life worlds which, in turn, requires participants of equal status. Until this requirement is met in Canadian society, client education must focus on the immediate goal, bearing in mind that it is only a step in the right direction.

The best method of client education is participation.

A responsible, capable public will not develop before that public first becomes able to defend their rights and views in the present context; the responsible advocacy skills required . . . should be developed . . . through increased opportunities for public participation in the current administrative process (Piven and Cloward 1979, 139-40).

Provided the "responsible, capable public" is politically welcome, the next step is to provide the structural and procedural requirements for communicative acting. Only if the participants have the authority to implement the results of their communication, will participation for the sake of legitimation cede to communicative acting. This step might seem difficult to take in a country that "wrote off as illegitimate any concept of popular . . . sovereignty" (Resnick 1984, 9). Yet it is conceivable, without too much utopian fantasy, that such processes could be instituted at the local level. Over time, the confidence of the participants in themselves and in communicative acting will grow, and the sphere of this type of policy-making can be expanded.

The third step is the one least likely to be achieved in the near future. It requires that the "internal colonialization" of the life order be overcome. This goal cannot be attained without major changes in the existing socio-economic order. But short of saying "we do not move until we can go all the way," we can at least start with the first step.

NOTES

1. The provincial legal aid plans are based on different concepts of legal aid. The plans in the Yukon, the Northwest Territories, Ontario, Alberta, and New Brunswick are based on the *judicare* model; those in Saskatchewan, Prince Edward Island, and Nova Scotia are based on the *staff lawyer* system; the plans in Manitoba, British Columbia, Newfoundland, and Quebec represent a mixed form, combining elements of *judicare* and the *staff lawyer* system (Poel 1983, Table 4).

2. The federal legal aid service in the Territories actually served as a model for the federal-provincial arrangements. "I would hope that the establishment of (a legal aid system) in the Territories will create a proper base for the development of appropriate arrangements (with) the provinces to ensure that an acceptable system of legal aid is available throughout the country" (Turner 1971).

3. The 1952 Annual Report of the Nova Scotia Barristers' Society records that "(the) members of Western Counties, Cape Breton and Colchester were contacted with the view of establishing Clinics in those areas, but the members were of the opinion

that such Clinics were not necessary or workable in their respective areas" (Nova Scotia Barristers' Society 1952, 23).

4. In 1967, the total number of applicants served in the clinics had reached 928, representing an annual average increase in caseload of 60 per cent since the beginning of the service in 1951. The major growth area was family law. The share of criminal cases rose by an annual average of 13 per cent.

5. "We have sent out some three hundred invitations to interested individuals and groups: trade unions, representatives of so-called minority groups, social welfare agencies, community-oriented bodies. We have obtained as many press releases as we could, we have tried to enlist the support of the media, we have written to churches, to practically every type of association that we thought would be interested in welfare problems and in supervision of legal aid, and we are just getting no response" (Thomas 1970).

6. In mid-1972, four legal aid offices existed throughout the province. By March 1975, the number had risen to 10.

7. The Committee visited 17 self-help organizations of the poor, 48 welfare agencies, and contacted 31 legal institutions and individuals including the existing legal aid offices.

8. Para-legals are trained to do the secretarial and routine part of legal work. "They can be used extensively in areas such as welfare and UIC appeals" (National Anti-Poverty Organization 1975, 6).

9. "We view the availability of N.S. Legal Aid to such Groups as an extremely valuable resource to enable Citizen input and participation to become a reality" (Metropolitan Alliance for Development 1975, 2).

10. The term "illocutionary" is taken from J.L. Austin who defines as illocutionary "any speech act asking or answering (. . .), giving some information, (. . .), making an appointment (. . .). Austin, John L. *How To Do Things With Words*. Oxford: Oxford University Press 1975, 98-9. Illocutionary acts are distinguished from "perlocutionary" ones, which are defined as those intending consequences. What Habermas is saying, then, is that communicative acting can only take place if everyone knows what s/he wants, everyone is open about what s/he wants, none pursue any hidden goals, and none are in any way hindered in interacting.

11. The objective world is the sum of all entities about which one can make true statements; the social world is the sum of legitimately ordered interpersonal relations; the subjective world is the sum of all subjective experiences which can be truly communicated (Habermas 1981, 2: 184-5).

12. Non-representation of clients on the Cox Committee was not the result of a planned strategy. The possibility just did not occur to those involved (Cox 1981). When asked whether he thought lack of client representation had negatively affected the work of the Committee, Cox said he did not think so. In his opinion, the collective expertise of the Committee members was sufficient to deal with the question. In support of his view, he pointed out that no substantial ideas had been added during the hearings to those which the Committee already had (Cox 1981). A more cynical view of the alleged competence of potential clients to deal with their

problems was expressed by the chairperson of the Gunn Committee. Judge Gunn related the story of a woman who had asked him, while the Committee was visiting a low-income area, "Legal aid, is that like Kool Aid?" (Gunn Interview).

13. In the literature on political socialization, these personality characteristics are identified as "lack of trust," "low feeling of efficacy," etc. William Mishler writes: "Among the most important of the traits distinguishing participants from non-participants in Canada is a cluster of political attitudes usually referred to as psychological involvement It is a broad-gauge determinant of political behaviour" (Mishler 1979, 66-7). These characteristics are in turn the result of more fundamental personality traits such as "weak ego," "rudimentary developed identity" and others (Lane 1959, ch. 11). For a more recent work on the interrelation of socio-economic characteristics and political participation, with special focus on the individual's capacity to conceptualize, see Barnes et al. (1979).

14. Habermas uses in this context the notion of the "internal colonialization" of the life world to underline the way in which the form of social development permeates the individual.

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TEN

BREAKING DOWN BARRIERS: INDEPENDENT LIVING RESOURCE CENTRES FOR EMPOWERING THE PHYSICALLY DISABLED

Don M. Fuchs

Millions of dollars and a great deal of public rhetoric on affirmative action have not substantially improved the oppressive conditions limiting the meaningful participation of the physically disabled in Canadian society. Both federal and provincial government policy on the physically disabled has often been patronizing and infantilizing. Much of this policy has been developed in the absence of any consultation with physically disabled consumers. It has led to the increasing development of cumbersome, ineffective, unresponsive and fragmented programmes for the disabled (Special Committee on the Disabled 1981). Because of the lack of ongoing involvement of disabled consumers in policy, planning and programme development and implementation, there are many gaps in the potpourri of services offered by public and voluntary organizations (Special Committee on the Disabled 1982).

The purpose of this chapter is threefold. First, the chapter describes the disparity between the needs of the physically disabled consumers and the services targetted at the disabled consumer. More specifically, the chapter focuses on the barriers faced by the disabled community in their efforts to obtain these services. Second, it presents a discussion of the emergence of the independent living resource centres (ILRCs) as a means of breaking down some of the existing barriers to effective services. Third, the chapter provides a discussion of the policy and programme implications of the development of ILRCs.

The chapter emphasizes a consumer-oriented approach to the development of rehabilitation policy and programmes. It assumes that any model of human service planning must build in regular consumer input. This planning necessitates the development of mechanisms for consumer organizations' and individual disabled consumer's input. This chapter discusses the utility of independent living resource centres (ILRCs) for fostering this input by the physically disabled consumers.

The author argues that ILRCs foster participation of disabled consumers by providing the opportunity for them to provide, as well as be recipients of, much needed social support. They assist the disabled individual in establishing links with the individuals and organizations who foster independence. Further, they provide the opportunity for disabled persons to use their skills to provide a variety of services to other individuals. The author argues that ILRCs founded on principles of self-help and participation provide a vehicle for bringing together people who have different disabilities and for involving them more directly in the planning and provision of effective services to other disabled consumers.

SOCIAL NEEDS AND BARRIERS TO RESOURCES

Many disabled people face a common plight. Looking beyond basic functioning, many of the disabled experience a degenerating cycle of social isolation and economic deprivation (Fuchs et al. 1984).

In a recent social needs assessment study of the physically disabled, it was discovered that over 75 per cent (347) of the individuals surveyed lived with little stimulation, opportunity or potential for social interaction (Fuchs et al. 1984). The study's most striking results showed a lack of support and independence experienced by many of the disabled in our sample. For a sizable proportion, the difficulties experienced were compounded by interrelated problems, in a self-degenerating cycle of dependency, poverty, immobility, and social isolation.

The sample for this survey consisted of 462 disabled individuals from the city of Winnipeg. There was an even sex distribution, with 50.1 per cent (231) males and 49.9 per cent (230) females (data missing in one case). As well, all adult age groups were evenly represented, with 33.1 per cent (152) of the individuals between the ages of 18-34, 30.9 per cent (142) between 35-54, and 35.9 per cent (165) of the individuals over the age of 55 (data was missing in three cases).

The major findings can be summarized as follows:

Economic Findings

- 66 per cent of the sample was unemployed. Only 18 per cent held permanent full-time employment.
- 65 per cent of the sample lived on an income of less than \$10,000 per year. Approximately 42 per cent lived on less than \$5,000 per year.
- 38 per cent of the respondents relied directly on state funding for their main source of income.
- 17 per cent relied on savings or private pensions for their income.

Social Findings

- 40 per cent of the respondents lived on their own, of which 107 (23 per cent of the entire sample) lived on less than \$10,000 per year. Half of these lived on less than \$5,000 per year.
- 63 per cent of the study's participants lived as single individuals. Approximately 10 per cent had been divorced or separated.
- marriage typically comes late for the disabled, as only 20 per cent of the individuals under 35 years of age were married. The remaining 80 per cent lived as singles.

Other Findings

- 74 per cent of the respondents reported having a functional disability relating to mobility.
- 50 per cent of the respondents reported having a dexterity impairment.
- only 9 per cent of the sample were attending some type of educational facility.

The study identified two levels of need. The first related to minimizing the discomfort or obstacles posed by the individual's disability. Primarily, services provided for this level of need were used by individuals with some degree of independence afforded by employment or marital support. At another level were the individuals living in multi-problem conditions, where the needs included any number of services for basic daily functions, housing, mechanical devices, economic support, employment assistance, mobility, and social support.

The study identified several themes. One of these was the disparity between use and need. In many dimensions there appeared to be inadequacies in either the availability or quantity of resources or in obtaining the services. In the case of home care and transportation, limitations on the resources available created problems in flexibility and difficulties in enlisting services for greater independence. Availability and accessibility were primary problems in the services relating to independent living, employment, education and rehabilitation.

There also appeared to be a lack of information regarding services available. The establishment of a service to provide information about the various services available and the agencies providing them appeared to be needed to assist consumers in gaining awareness of community resources.

In addition, the researchers recommended that programmes should look beyond disability-specific rehabilitation to the development of connections between various rehabilitation services and natural supports. That is not to say that disability-specific programmes were not of use, as they have provided necessary preconditions to functioning. It did suggest that other preconditions were necessary to take one additional step toward the development of independent living resources for the physically disabled.

The study report argued that what was needed was a shift in philosophy, rather than more formal helping programmes *per se*. The intent of the shift would be a movement toward new independence for disabled. In essence, this would mean a shift in resources, with an increased effort toward the development of economic

and social connections. By shifting resources, many functions now carried out by service programmes could be fulfilled by informal social support systems, and hence grant greater independence to the individual.

The study's results point to the need for an expanded role for disabled self-help groups, particularly in the provision of mediating, brokerage and advocacy services offered by the physically disabled for the physically disabled. In addition, they suggested a greater role for groups in the planning and development of rehabilitation services. Their paramount mission ought to be the promotion of independent living through efforts to achieve the following objectives:

- Adequate income.
- Support for promotion of self-help efforts.
- Provision of technical aids and community support services such as attendant care and intervenor services.
- Equal benefits and protection under the law.
- Equal opportunity of access to public buildings, facilities and programmes.
- Equal access to a full range of opportunities in
 - Employment
 - Housing
 - Education
 - Transportation
 - Recreation
 - Communication and Information.
- Provision of community support services to reduce or eliminate the need for institutional care.
- Improved quality of life for disabled persons who live in institutions.

(Special Committee on the Disabled 1981)

REMOVING OBSTACLES TO INDEPENDENT LIVING THROUGH SELF-HELP ORGANIZATIONS (ILRCs)

The vast majority if not all of physically handicapped people (including many elderly people) can achieve a maximum of their potential development and effectiveness within society when they can live in surroundings of their own choosing with adequate home support services. Their well-being can enhance their contributions to the community both on personal and humanitarian levels and on employment and consumer activity levels. (Manitoba League of the Physically Handicapped).

The social need study cited earlier clearly demonstrated that many of the traditional services available to disabled individuals tended to be fragmented and tended to isolate individuals by disability rather than to identify their common concerns. The study argued that they needed mediating services which offered services according to the human needs of the individuals rather than on the basis of disability or programme labels (Fuchs et al. 1984).

This chapter argues that disabled service consumers can be effective service-providers in the following areas: survival, habilitation/rehabilitation training and education programmes, employment and independent living. The intent here is not to replace existing rehabilitation services but to develop mechanisms which foster the responsiveness, availability and access of existing agencies.

To accomplish the objective of providing continuous varied self-help opportunities, the author argues for the development of independent living resource centres (ILRC) as a means of fostering self-help groups' activities across disabilities.

The ILRCs are emerging in various locations throughout North America (Special Committee on the Disabled 1982). They have developed out of the recognition that a number of needs, not being met by the traditional rehabilitation services, could very appropriately and effectively be met by physically disabled individuals providing help to other physically disabled consumers. Also, they have emerged as a means of fostering dialogue about common concerns and issues among the rapidly-growing number of self-help groups of the physically disabled.

The initial idea for ILRCs came out of Berkeley, California, when a group of disabled students got together after university graduation and collectively hired the support services they needed to live independently (Colgan 1984). In time, they expanded and added other services such as peer counselling, wheelchair repair, advocacy and legal services. Since that time, these centres have been established throughout the United States (200) and Canada (5).

The ILRCs have their roots in the consumer movement which began in the 1960s and early 1970s. The independent living philosophy was an outgrowth of the philosophy of self-help and consumer participation advocated by various groups of the disadvantaged in Canada during this time: native groups, women's groups, ex-offenders, drug addicts, gay/lesbian rights groups, welfare rights groups. The accompanying rapid technological growth of the last 20 years has had a major effect on the resources and options available for the physically disabled. The philosophy of independent living asserts that everyone has the potential to live more independently and that even the most severely and profoundly disabled individuals can control their lives (Special Committee on the Disabled 1981; Horne 1981).

ILRCs have each adopted a somewhat unique style to fit the needs of the area in which they are located. Generally, they take the form of mediating self-help organizations, using the resources indigenous to the disabled community to foster independence and greater participation of the disabled. The underlying assumption of many of these organizations is that environmental barriers are as critical, if not more so, than personal characteristics in determining an individual's ability to cope with his or her disability (Colgan 1984). The independent living philosophy views environmental barriers as the origin of most obstacles to independence and autonomy.

This philosophy argues that traditional rehabilitation services agencies must rethink their approaches to the disabled. It argues that traditional service providers need to move beyond their notion of rehabilitation as a narrow goal of the individual's successful integration into the industrial labour force. This move would involve a major change in the philosophy of this service sector, involving a perspective

of the individual in which the disabled person is seen as being able to influence, as well as be influenced by his or her social environment (Thurstone 1981). It views the individual as actor, adaptor and initiator rather than passive reactor in helping. It views the disabled person as "being able to meet the demands of society on its terms given the necessary resources" (Horne 1981). The framework would accept the uniqueness of the person instead of using labels such as malformation or maladjustment (Thurstone 1981).

The concept of an independent resource centre builds on the notion there is lack of fit between the traditional rehabilitation service sector and the needs of the physically disabled. The resource centre provides a vehicle for the involvement of individuals with a wide range of disabilities, working together with other disabled individuals, to foster independent living.

Specifically, the functions of an ILRC for the physically disabled would include: peer counselling, i.e., linking recently-disabled people to individuals who have been disabled for a longer period of time to help cope with the transition to life with a disability; and, brokerage, i.e., linking disabled people to appropriate resources through provision of information, advice, support, referral and assistance. In addition, ILRCs would be involved in the advocacy/mediation functions described earlier. Disabled individuals, as staff of the resource centre, would meet with professionals and members to clarify issues and to advocate the needs of the resource centre's individual members. As mediator/advocate, the resource centre would isolate alternatives and negotiate compromises with the formal helping services to more effectively meet the needs of individuals with a variety of disabilities.

ILRCs would be available to the disabled on a 24-hour basis. They would provide recreational and leisure activities for the disabled as well as support services. Membership in the centre would necessitate participation. This requirement would develop the helping resource pool for the ILRC and help link new members to other members and resources.

In addition, existing ILRCs have become a clearinghouse for the burgeoning numbers of self-help groups of the physically disabled, providing a vehicle for fostering much-needed communication amongst them. They systematically gather information about the existing groups and disseminate this information to interested groups through directories, newsletters or telephone networks. In addition, as a clearinghouse, the ILRC serves as a planning and coordinating mechanism. As a planning mechanism, the ILRC provides a vehicle to identify and address needs and problems. It assists individual groups in pooling and coordinating their collective resources to address various common issues relating to the needs of the physically disabled (e.g., employment, support services, housing, transportation).

The role of the professional in these centres varies with the goals and composition of the ILRC. Social workers could serve as sponsors, facilitators, members, brokers, advocates, mediators or consultants around a wide range of issues, problems and situations (Froland 1981). Most important, the role is assumed as a peer, in keeping with the informal egalitarian peer orientation of these groups. Formal helping agencies have worked out relationships where the ILRCs offer complementary,

supplementary and, in many cases, alternate and more appropriate forms of services to the physically disabled (Whittaker and Garbarino 1983).

This author maintains that self-help groups and ILRCs of the physically disabled can serve four functions in breaking down barriers to access: they can 1) provide social support for members as they cope with day-to-day problem solving or life transitions; 2) provide help for individual members with personal change (behavioural or attitudinal); 3) link individuals with appropriate helping resources and advocate for their concerns; and 4) work towards changing policy, programmes and practices to foster independent living for the physically disabled.

A number of reinforcing developments have ensured the maintenance and perpetuation of the self-help group, and specifically the ILRC, among the communities for the physically disabled. These include the facts that: 1) many members perceive their self-help experience as effective and valuable and are thus supportive of the general concept; 2) self-help group members, through their group participation, are experienced and confident in operationalizing self-help concepts; 3) resources are available for the development of groups; 4) there is community acceptance and awareness of the self-help approach as a legitimate strategy for personal change and enhancement; and 5) governmental support exists for the development and utilization of self-help groups (Wollert and Baron 1983).

THE CURRENT ROLE AND FUNCTION OF ILRCs

The *Obstacles Report* (Special Committee on the Disabled 1981) and the follow-up report *Beyond Obstacles* (1982) strongly recommended the establishment of ILRCs. Although the service provided by an ILRC varies from place to place, depending on the availability of services required by disabled people to live in the community, the overall goal is the same: to maximize the independence and participation of the disabled in their communities. Participation is a major principle directing the activity of the ILRCs. In addition, the following principles are also commonly noted when examining the ILRCs:

1. disabled people, through their experience in being disabled, best know the needs of disabled persons;
2. support services should be based on consumer-controlled policies;
3. the focus of services is to change the environment and not the individual;
4. the goal of services is integration into the community;
5. the disabled individual can help him/herself through helping other disabled people (Colgan 1984; Special Committee on the Disabled 1981).

The ILRCs in Canada have generally performed some or all of the following functions: attendant care, housing referral, public education, peer counselling, accessibility consultation and advocacy (Fuchs 1984). The unique aspect of an ILRC is not only the individual services it provides, but also its responsive, adaptive and holistic approach. An ILRC provides services across different types of disabilities and in areas of concern, e.g., housing, transportation, employment, sexuality and social support. "The centre does not seek to duplicate existing services but to fill

in the gaps to ensure that the necessary provision required by disabled people to live in the community are available" (Colgan 1984). Centres also serve to monitor existing rehabilitation services and serve as brokers, mediators and advocates for the disabled to access the support they need to achieve and sustain independent living.

The services of independent living resource centres:

1. rely on the voluntary participation of disabled persons interested in the self-help approach;
2. provide a cross-disability referral and information coordination aspect; and
3. complement and supplement the services already in existence.

Policy Implications of ILRCs

Wollert and Baron (1983) suggest that there are a number of mediating pressures for the creation of additional self-help groups, informal caring resources and, this author argues, independent living resources for the disabled. These include:

1. erosion of the capacity of traditional sources (family, friends, church) to meet the supportive needs of a rapidly-changing society;
2. weak governmental support for the formal development of comprehensive human services programmes for the disabled; and
3. inability of the public and private sectors to generate truly effective (timely, coordinated, inexpensive, focused) service delivery systems for the physically disabled.

Self-help and informal care approaches represent a particularly problematic challenge at both the policy and practice levels; they are not specifically designed to be sympathetic to the values or goals of the formal sector. Indeed, some authors argue that they may have the potential to erode some of the assumptions about the allocation of power implicit in the political structure and in relationships between professionals and clients. However, at present, a "social posture" between the formal and self-help sectors is still in the making. Neither side quite knows what to make of the other. Furthermore, some of the contextual factors influencing that evolution are already beyond the conscious control of either sector.

Altogether, there is no clear picture of a settled relationship between the two sectors (Pancoast et al. 1983). A number of pre-existing or external factors militate against a ready mutual confidence. The choices between conflict and cooperation, or between a continuum of care and alternative sources of care, remain in the balance.

Paths for Policy

Parker, Pancoast and Froland suggest three paths for policy on the self-help movement which, this author argues, have important implications for the ILRCs (Pancoast et al. 1983). They suggest that governments should take this silent mobilization

seriously and focus on development of policy responses, which can be divided into three major groups: parallel development, structural response, and incremental response.

The policy of parallel development is founded on the assumption that the functions of the professional are fundamentally different from those of the self-help movement; the best prognosis is for a symbiotic relationship rather than a continuum of care conceived within a single structure. In particular, the formal sector can use self-help as a corrective influence on its own practices by selecting and incorporating appropriate features without attempting to embark on any partnerships. Such a policy appears to be best suited to a country or province where the professional role is heavily defended or the administrative organization is too fragmented to consider initiatives with forces outside its own domain. However, parallel development is best seen as an initial phase, in which the formal sector sizes up the potential of self-help before taking any purposeful initiatives.

Pancoast et al. distinguish between a structural and an incremental response. The distinction hinges on whether a policy undertakes to shape events by changing systems and thus generating consequences, or whether it responds to identified developments that need some support to continue. Examples of a structural response include the reform of welfare benefits, giving potential informal carers a realistic choice between going to work and caring for their dependents in the community; the development of local non-political citizens' groups to act as intermediaries between professional services and their communities; the establishment of professional advocate/mediators for self-help organizations at the local, regional, and national levels; and the modification of workers' accountability and confidentiality constraints, allowing them to implement less controlling service delivery plans. All of these proposals share an active commitment; they contain the belief that changes in the formal system will engender a strengthened self-help system.

The incremental approach is the most strongly espoused by Pancoast, Parker, and Froland. Seed money for self-help groups, demonstration projects and research, clearinghouses, and training opportunities for professionals are all given as constructive responses to perceived needs, both of the self-help and informal care movement and of professionals working with them. It is undoubtedly easier at first glance to construct a policy for self-help groups than for informal carers. After all, the existence of an identifiable organization gives the policy-maker something to aim at. Self-help groups can be given money, evaluated, and abandoned; informal helpers are much more elusive. However, in the long run, the statutory sector may be more at ease working with a presence that has no organizational identity, does not seek confrontation or even contact, but is simply there, for richer or poorer, depending on the consideration bestowed on informal carers by a sympathetic state. Informal care is ultimately more enduring and, in that sense, more reliable than self-help groups. Hence, the informal caring of the ILRCs is necessary to serve the maintenance and developmental needs of the physically disabled.

Many of the authors in the self-help and informal helping fields have argued that a social relationship among the statutory, self-help, and informal sectors contains

intangible factors that cannot be totally controlled and, furthermore, that the structure of this relationship varies according to cultural, social, and political circumstances (Gottlieb 1983; Pancoast et al. 1983; Whittaker and Barbarino 1983). However, future policy developments will require further initiatives to generate self-help and informal caring activities, and further collaboration and dialogue between the formal and informal helping sectors for the disabled.

While the ILRCs and other organized self-help groups of the physically disabled are already finding new and larger roles to play in contemporary society, there are some major policy issues which must be addressed. Parker (in Pancoast et al. 1983) suggests that the specific issues are complex and contradictory, but the themes are simple: Safety — Can policy protect the informal sector from exploitation and keep the formal sector from abdicating its duties? Performance — Can self-help and informal care be counted on to do what their advocates claim?

CONCLUSION

The development of self-help groups and independent living resources for the physically disabled represents a "silent movement" which is having a profound impact on the development and delivery of services for the physically disabled. Federal and provincial policy-makers must become increasingly aware of this force and work towards developing effective mechanisms to foster the participation of disabled consumers in policy-making processes. The glaring gaps in traditional rehabilitation policy, programmes and services and the apparent lack of fit between these and the needs of the disabled consumers, suggest that mediating consumer organizations are needed to promote participation of the two levels. ILRCs provide one mechanism for the promotion of this participation. They provide a vehicle for disabled consumers to have input into the policy-making and planning of public and voluntary organizations and they provide disabled consumers with the opportunity to become involved in the delivery of services. These developments lead to more effective programmes and more appropriate policy governing services for the physically disabled.

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Indian Child Welfare



ELEVEN

CASE MANAGEMENT IN ONTARIO: DEVELOPING AN ACCOUNTABILITY SYSTEM ON BEHALF OF YOUNG OFFENDERS

Peter McMahon, Bill Rowe, Douglas Hayman

The purpose of this chapter is to explore and describe the development and early implementation of a case management system for young offenders in southwest Ontario. The Ministry of Community and Social Services is responsible for the juvenile justice system (to 16 years of age) in Ontario. A project creating this system employed many of the features of goal-oriented recording and some of the latest theory on case review systems and case audit formats.

The initial section of the chapter will be devoted to a general discussion of the case management process, including the tasks associated with this process, from a theoretical perspective.

The next section presents a description of the two-year project including the demographic features of the southwest region, the number and types of personnel and agencies in the juvenile correctional system and a brief description of the development of a case management policy for the region. This section concludes with a brief exploration of the case recording systems and case decision-making practices observed by the consultants in the initial stages of the project and under the now-repealed *Juvenile Delinquency Act*.

A description of the development and utilization of the goal-oriented case recording system and case management plan is featured in the next section. It includes a description of how input was solicited from all levels of personnel and how the training system for line staff and supervisors was initiated.

The chapter concludes with a description of the development of the case review system and the case audit process, which were designed to ensure that the new case management system would be implemented and maintained throughout the juvenile correctional system in the region.

THE CASE MANAGEMENT PROCESS

Case management is widely viewed in the human services as a mechanism for linking and coordinating segments of a service delivery system to ensure the most comprehensive programme for meeting an individual client's needs (Austin 1983). The process usually involves one person or team that assumes responsibility for meeting the identified needs of the client by:

- a) managing a comprehensive assessment,
- b) developing a plan,
- c) procuring and/or delivering a series of services, and
- d) monitoring and evaluating the services provided to ensure that they meet the identified needs of the client.

The primary functions of case management have been described by Austin as:

- a) screening and determining eligibility,
- b) assessing the need for services and related needs,
- c) care planning (i.e. developing a service plan),
- d) requisitioning services,
- e) implementing the service plan,
- f) coordinating the services,
- g) following up, and
- h) reassessing, monitoring and evaluating services on a periodic basis (Austin 1983).

In the U.S. publication, *Principles of Accreditation of Community Mental Health Service Programs*, case management was defined:

Case management services are activities aimed at linking the service system to a consumer and at coordinating the various system components in order to achieve a successful outcome. The objective of case management is continuity of services Case management is essentially a problem solving function designed to ensure continuity of service and to overcome systems rigidity, fragmented service, misutilization of certain facilities and inaccessibility (Leavitt 1983).

A publication of the Task Force on Deinstitutionalization, Rehabilitation and Long-term Care of the President's Commission on Mental Health described the functions of the case manager in working with the chronically mentally disabled. The report suggested that these functions include developing an individualized case management plan; monitoring and adapting the plan to meet changing needs of the

individual; and finally, remaining in extended contact with the patient and acting as a friend and advocate (Report 1978).

In Ontario, these functions have been in operation for a number of years in the psychiatric area. At St. Thomas Psychiatric Hospital, a comprehensive case management process has been practiced for the past decade. Balderston and Kuchmak describe the process:

Case management is the individual one-on-one involvement and coordination of the discharge plan which is designed with and for the individual person discharged from St. Thomas Psychiatric Hospital and carried out by the Community Aftercare case manager, providing a continuation of care to the client, ensuring a smooth transition from the hospital to the community, and aftercare thereafter *for as long as is necessary* for the referred identifiable chronic mentally disabled patient (Kuchmak and Balderston 1984).

In a work entitled "Case Responsibility in Ontario: A Position Paper" Craig Shields and Nancy Green, two senior officials of the Ministry of Community and Social Services, outlined their Ministry's basic approach to case management. It was to require the designation of:

a single case responsible individual for all clients of Ministry licenced, funded, or operated children's services, other than those of regular day care (Shields, Craig, and Green 1983).

The paper goes on to outline the expectations and responsibilities of the case responsible individual. Such an individual had the responsibility to encourage, support and monitor

- family involvement in service decisions,
- coordination of assessment planning and provision of services in relation to a child or family,
- smooth transfer of responsibility for clients between agencies, where continuity of services is required and possible,
- agency provision of agreed-upon services,
- adherence to the Ministry's basic principles of service delivery (Shields, Craig, and Green 1983, 2).

DESCRIPTION OF THE PROJECT AND ITS ENVIRONMENT

The Objectives of the Project

The project took place over 18 months. The first phase, approximately 10 months in duration, concerned itself primarily with a review of what was currently in place and the development of a system that would somehow operationalize the Case Management Policy. The second phase of the project attempted to implement the new system in the juvenile correctional system in the southwest region. Thus, the objectives of the total project were as follows:

Phase I

Major Objective

To design, develop and test a system that includes a set of instruments to operationalize the southwest region Case Management Policy for Probationers and Wards of the Area Managers. In addition to defining clear recording requirements at different points, the proposed system will also have the capability of evaluating the effectiveness of the Case Management Policy on a case by case basis.

Minor Objectives

To develop a system that will have a clear focus on the child from initial Court appearance until the termination of probation or wardship.

To develop a system that will provide senior administration with the opportunity to establish certain minimum expectations for service providers with respect to the quantity (and to a point, quality) of care received by Probationers and Wards of the Area Managers. Since new expectations may be introduced, it would be important to design a system that features a developmental approach.

To develop a system which includes a recording process that takes advantage of the more appropriate features of Goal-Oriented Record Keeping.

If required, to develop a recording system that may be computerized in the near future.

To develop evaluation instruments that include the opinions of clients and their parents with respect to the value of the services provided.

If possible, to provide "hands on" instruction for Ministry Personnel with respect to evaluating the effectiveness of the case management system.

To develop a record keeping and evaluation system based on the extensive work already accomplished by Ministry officials.

Phase II

Objectives

To implement under the Young Offenders Act a comprehensive system of reporting, recording, case review and audit to support the southwest region's Case Management Policy.

To assist staff in the further development of case management and case review skills.

The Environment of the Project

The southwest region of Ontario covers approximately 20,000 square miles and has a population of 2,681,400. The region includes such cities as Hamilton, St. Catharines, Kitchener-Waterloo, London, Windsor, Sarnia and Owen Sound.

For the purposes of the Ministry of Community and Social Services, the region is divided into four areas — Hamilton, London, Waterloo, and Windsor. Major probation offices are located in each area with sub offices located in the smaller centres. Large sub offices are located in Sarnia (Windsor Area) and St. Catharines (Hamilton Area). There are approximately 120 probation offices, 7 supervisors and 4 direct service managers in the juvenile correctional system in the region. A significant majority of the personnel have been educated to the bachelor level. A formal in-service training programme covering all areas of the juvenile justice system has been in operation for the last 10 years. Each area has either a Ministry or a privately contracted observation and detention centre. One training school, Sprucedale, is located in the region and Catholic youngsters are sent to St. John's Training School outside Toronto. A substantial number of children's treatment centres and children's mental health centres are located in the region.

The Southwest Region's Case Management Policy

A study of case management practices in the juvenile corrections system arose from a concern that the Ministry provide the best service possible for children under its care. A client involved with this system will encounter a variety of staff, including probation officers, observation and detention workers, supervisors of juveniles and social workers in various systems. In addition, the client's life will be affected by a number of administrative units including the area office, detention centre, training school and probation service. This interlocking network requires extensive effective case management to ensure a continuity of service to clients.

A paper entitled "Case Management Probationers and Training School Wards" was prepared by the southwest regional planning unit of the Ministry of Community and Social Services in 1981. The paper contained 16 recommendations that were reviewed jointly by the Children's Regional Management Committee and the probation supervisors. As a result, a draft Case Management Policy was approved by the Regional Management Committee in April 1982. The policy was then considered by three corrections-related regional committees, which were directed by the Regional Management Committee to refine the policy for purposes of implementation. The committees included the Probation Supervisors' Special Interest Group, the Sprucedale Training School Liaison Committee and a specially appointed Case Management Sub-Committee. The policy Statements were confirmed by the Regional Management Committee in February 1984.

A common definition of case management was adopted. It stated:

Case Management is a responsibility designation that identifies a single person as having the responsibility to ensure that all relevant providers of service participate fully in the planning and delivery of services to the client.

The probation officer is identified as the "single person" having case management responsibility in the southwest region. He is appointed case manager either when a predispositional report is requested by the Court, or, where no such report is requested, at the time of disposition to a Ministry service. As case manager, the probation officer has the responsibility and the authority to ensure that placement planning is considered by all relevant service providers at regular intervals; that

placement decisions are reached by negotiation and consensus; and that all placement recommendations are implemented. The case manager does not have the authority to impose a certain outcome on decision-making regarding clients, but rather, to ensure that decisions are made on behalf of the client by the appropriate decision-making forum.

Central to the success of the case management policy is that the same person remain case manager from the client's point of admission until discharge. Included in this notion of continuity of the case manager was the element of continuing involvement of the probation officer/case manager both with the client and with planning for the client while the client resided at either an observation and detention centre or at a custodial resource such as a training school or treatment centre.

While the Area Manager has the acknowledged final decision-making power with respect to planning for clients, it was anticipated that all service providers would seek workable case work plans by consensus rather than by resorting to this authority.

Recording Process and Case Management System Prior to the Introduction of the *Young Offenders Act*

This section describes the recording and reporting system in effect in juvenile justice in the southwest region in the initial phase of the project. It should be noted that the system functioned under the now-repealed *Juvenile Delinquency Act*. It was conducted:

- a) by reviewing a significant number of open and closed files at Sprucedale Training School and the Probation and After Care Office in London. This process was later expanded to include files from the Hamilton Probation and After Care Office;
- b) by conducting a series of interviews with probation officers, training school officers and supervisors and administrators within the juvenile justice system;
- c) by extracting policies and procedures with respect to case management; and by recording and reporting from the Probation and After Care and Training School official policy and procedures manuals.

As a result of these endeavours, a flow chart was developed that picked up the child in the predispositional phase of the system and followed him or her through the other three phases: probation, training school and aftercare. The flow chart was presented to the Regional Case Management Training Development Committee and processed for accuracy and additional factors not accounted for. The total process was also assessed for the changes that would occur with the introduction of the *Young Offenders Act*. The flow chart was then translated into the following narrative form.

Phase I: Predisposition

When a child was before the Court under the *Juvenile Delinquency Act* and was found delinquent, the Judge could order a predispositional report or assessment. The options at this point included a social history of the child and family, to be

completed by a probation officer, or a psychological assessment of the child, possibly done by a variety of organizations, including:

- a family court clinic,
- a children's mental health centre,
- a children's aid society (if the child is a C.A.S. ward or simply has C.A.S. involvement),
- a children's treatment centre (if the child is a resident), or
- under the *Young Offenders Act* (Y.O.A.), the John Howard or Elizabeth Fry Society may contract for a social history and/or personality assessment.

According to the Policy and Procedures Manual, the social history focused on factors that have contributed to the delinquency on a long-term basis instead of focusing on the current offence. The probation officer had to ensure that all the data contained in the history could be verified and that the sources of information were cited in the social history, and understood that they might have to testify in Court.

The role of the observation and detention centre

On occasion, a child before the Court and awaiting the disposition of the Judge could be remanded to the local observation and detention centre. The rationale for this included the likelihood that the child would not appear for trial or the seriousness of the offence, which dictated immediate incarceration.

If the child was to receive an assessment while in the care of an observation and detention centre, it could take place within the centre or at a family court clinic. The assessment could be specified as medical, psychological, psychiatric, educational or social. To provide assistance in the assessment, the observation and detention centre "must stress observation of the child as well as detention." The role of an observation and detention centre in coordinating the assessment and in transporting children to assessment appointments varies from region to region.

With respect to the actual assessment, the centre and the court clinic are required to develop a means of sharing information, which could include:

- the history of the child,
- observations made by the centre and clinic staff,
- management concerns or predictions,
- information from the school situation,
- information concerning agency and family support systems,
- information concerning the Court's disposition of the child and, if possible, the child's adjustment to the management plan.

When a court clinic was not available to perform the assessment, it was anticipated that the observation and detention centre would cooperate fully with the organization contracted to do the assessment.

With respect to communicating with the judge, the Policy and Procedures Manual recommended that a formal channel be established so that both the centre and

the court clinic have access to the judge to either advise him or her of a child's need for assessment or to communicate the findings of an assessment.

Each child remanded to an observation and detention centre was assigned to a prime worker who was primarily responsible for serving as the child's representative among the direct care staff. The prime worker would try to build a relationship with the child, which would continue through the remand period, then upon release would assist in a successful transition to a home or placement.

To assist the prime worker, a comprehensive check list had been developed. In addition, the prime worker was responsible for completing a case management guide which contained specific information about the child, case contacts, appointment details, results of case conferences and the objectives of the prime worker. This guide formed the basis of the case management plan for the child.

A major report was prepared for each child remanded to an observation and detention centre for longer than 48 hours. Prepared by the prime worker, the report was intended for either court submission or as a summary to the case planning guide.

Phase II: Probation

When a child was placed on probation and assigned to a probation officer, the officer completed the initial documentation. The first task was to complete an intake form and to open a case file. The appropriate forms required by the Child Advocacy Information System were also completed and forwarded to Toronto.

During the initial interviews, the officer ensured that all conditions and terms of the probation order were understood by the child and parent/guardian. The probation order was signed by the probationer and, if possible, by the parent/guardian.

At this point, the initial entry in the record featured an assessment and plan for the child. The assessment included a review of the child's family situation, education, health and social relationships. The plan reflected the active involvement of both the child and parent/guardian and must have been based upon the conditions of the probation order. This initial entry had to be completed within six weeks of the child being assigned to the probation officer.

Ongoing probation process

It was the responsibility of the probation officer to carry out the supervision plan, reviewing it each quarter and making any revisions necessary. Two major types of recording were required during the ongoing probation process. The first type involved the probation officer's field notebook or casebook. In this book, the officer recorded *all* contacts with probationers, family and others as they occurred. The notes were required to be up-to-date, clear, signed and dated.

The second type of recording was the quarterly summary of activity with the probationer and his family. The Policy and Procedures Manual mentioned that a summary was to be done if chronological recording in the case file was not done. However, chronological recording seemed to be quite redundant if the casebook was kept up-to-date. Chronological recording also precluded the valuable process

of "stock taking" or reviewing a case on a periodic basis. Thus, the quarterly summary seemed to be a very useful case review exercise. The quarterly case review outlined the progress of the plan and accounted for any variation in it. In the case of an indefinite probation order, it was necessary to set goals towards possible termination of probation. Although no official case review was done on a quarterly basis, cases were formally reviewed every six months through the internal case audit system.

Other types of recording included transfer summaries, when the child changed workers or moved to another area, and final summaries when a case was closed.

Frequently, the probation officer was required to write a report to assist the judge in reviewing a probation update or in making a new disposition. It was anticipated that probation reports would contain the following information:

- a statement of the purpose of, and reason for, probation reports;
- a summary of contacts, including the number and nature of the conferences upon which the report was based;
- a summary of the client's behaviour and attitude at home, school, and/or in employment;
- a summary of the quality of relationship developing or existing between the probation officer and probationer;
- the evidence regarding compliance with court orders;
- future plans for the child;
- a report on what all other agencies and services were doing or planning to do for the child.

Phase III: Training School

A child could be committed to training school on a first offence (i.e. "off the street"), while he was on probation, a ward of a children's aid society or a combination of the last two. A training school ward could be recommitted within the first six months of graduation from the school. When a child was committed to the training school, the records clerk of the school monitored receipt of the required documents. Since he or she was community-based, the probation officer was responsible for gathering and forwarding to the training school the following documentation:

- the committal order,
- summary of probation,
- the child's social history (if one has been done), and
- the psychiatric or psychological evaluation, if available.

The court was responsible for sending the following documents:

- transcript of court proceedings,
- the court order, and
- the predispositional assessment.

Upon arrival at the training school, a child was placed in an assessment (i.e. intake) unit for a maximum of 21 days. During this period, the Initial Case Conference was held. The purpose of this conference was to assess the needs of the child, based on the material and the observations of the intake unit staff, and to develop a plan with appropriate recommendations for the treatment phase of the child's stay in the training school.

The Initial Case Conference report was prepared and distributed within one day. In addition to the copies distributed within the Training School, one was forwarded to the Training School Advisory Board. The prime worker assigned to the child during the treatment phase was responsible for preparing two brief documents. First, this worker drafted a treatment plan based on the recommendations of the Initial Case Conference and made it available to the unit staff. Second, in conjunction with the child, the prime worker drew up a treatment sheet outlining goals to be worked toward.

Every four to six weeks, a review conference was held. Participants included the prime worker, the unit supervisor, and the probation officer. With respect to participation in the review conference, the unit supervisor had to be in attendance if the conference was to be considered a decision-making conference. Similarly, if the probation officer was to have major input into the treatment plan, and various aspects of the plan for eventual discharge, his participation was considered essential.

The prime worker was responsible for pulling together two major reports for the review conference. One report related to the child's treatment progress and was drawn from daily behavioural and progress notes. A second report was designed to summarize current information about the child, including school progress and behaviour, social behaviour, and medical information. This report ended with an estimate of the length of treatment and an outline of tentative discharge plans. The probation officer was responsible for submitting regular reports on the child's current home situation. Copies of the conference report were sent to the Training School Advisory Board and to the probation officer.

When it had been determined that the child would shortly require a community placement, the unit manager forwarded a formal request to the probation officer for a Home Inspection Report. The officer had 30 days to complete and submit the report to the training school.

The Home Inspection Report, as well as being considered at the next review conference, was forwarded to the Training School Advisory Board for its approval of the proposed plan.

If it had been determined that the placement most appropriate for the youth would cost more than \$25 per day, an additional investigation known as the "Report on Special Rate Facility" was also completed. Again, a copy of the report would be forwarded to the Training School Advisory Board. Following consideration of one or both of these reports at the next review conference, and taking into account the recommendation from the Training School Advisory Board, a placement decision would be made with respect to the child.

Phase IV: Aftercare

When a child was placed out of the training school he or she again became the responsibility of the probation officer in his or her role as aftercare officer. The major reporting mechanism in this phase was the placement report, completed by the probation officer one month following placement and every three months thereafter. In addition to the placement record, the probation officer was responsible for completing adverse placement reports and formal change notices to the child advocacy information system. Reports continued until the child was either returned to training school or wardship was terminated.

CASE RECORDING

The former system of record keeping in the Ontario juvenile justice system was a hybrid of clinical, correctional and social work orientations. It had been developed on the responses and needs of the court, various professionals, probation and correctional workers, agencies and training schools. Over the years, a number of case recording alternatives had been considered and had achieved varying degrees of acceptance and utilization. Many offices had experimented with different approaches, but no single system provided consistency and followed through from one office to another or from one service to another.

The Case Management Advisory Committee had recommended the introduction of a Goal Oriented Recording System that could meet the information and tracking needs of the entire system (first contact through discharge). In this section, the components of goal-oriented case recording are presented from its medical beginnings through to its current usage in children's mental health settings. Following this, the difficulties associated with adapting this system to the juvenile justice system are presented. The steps taken to formulate a recording system for the southwest region are detailed and the system in its current state of development is presented. Finally, a description of the training format instituted is shown.

Goal-Oriented Recording

The medical record currently used has not changed significantly in over 400 years. The purpose of the record has been outlined as follows:

- a) an adjunct to the memory of the physician concerning history, observations and treatment;
- b) an accessible repository of up-to-date information about the patient;
- c) an accurate reflection of what is taking place in treatment;
- d) a record of the development and testing of clinical hypotheses;
- e) information for research purposes;
- f) a scientific document available for teaching purposes and audit; and
- g) an accurate legal document (Grant 1983).

In most instances, medical records have been source or discipline-oriented. Each attending professional has recorded his or her observations, assessments and

involvements separately. This has often resulted in a disorganized, overwhelming and confusing collection of data, the interpretation of which was left to the reader.

Based on concern about the inadequacy of source-oriented records, Lawrence Weed introduced a new method of recording which he termed Problem Oriented Medical Recording (POMR) (Weed 1969). Weed offered a system designed to ensure a line of logic and accountability from presenting problem through to resolution. This system consisted of four elements: the data base, problem list, plan and progress. Some of the features of this approach were:

Data Base: The minimum data required for a given setting or orientation is predetermined and then consistently collected. This is dictated by experience and practice.

Problem List: Problems are formulated based on observable data that can be communicated in a succinct manner. The problems must be supported by information gleaned from the data base.

Plan: Treatment plans must refer directly to a specific problem that has been identified and supported by data.

Progress: Progress is evaluated at projected times and is recorded for each identified problem.

The preceding paradigm has been adapted to most major medical facilities in North America (Valberg n.d.)

In the early 1970s, attempts were made to introduce Weed's method into psychiatric and non-medical settings (Ryback 1974, 192; Fay and Norman 1985, 25: 28-30). The system was not as readily adaptable to these settings for a number of reasons. First, social and emotional problems are not as clear cut and identifiable as physical problems. Second, solutions or actions in these areas have traditionally been more amorphous than in medical settings (e.g. building a relationship). Finally, many workers resisted the problem focus of the system, believing that it created a negative bias to patients or clients (Kane 1974; Martens and Holmstrup 1974).

A number of adjustments and changes have been made to the original POMR, with varying degrees of success. Goal-Oriented Recording (GOR) has been introduced into some children's mental health settings. Authors have suggested that these methods are of benefit to line workers, researchers and administrators alike. Some of the advantages that have been noted are as follows:

The worker:

- a) has a clear indication of why clients came for service;
- b) knows at any time which individual problems are being addressed and the treatment plans for each;
- c) can articulate the strengths of the client and monitor progress in these areas;
- d) can see at once which individual focus areas are reaching the treatment goals;
- e) can learn from the record of his own thought process about treatment, and can clarify that process; and

f) has a continuous record of individual progress through time in specific focus areas to inform treatment decisions in future cases with similar situations (McCartney 1978).

It is important to note that while the advantages of the GOR appear to be numerous, many settings have not readily adapted to this format. It appears that line workers must be both consulted, and worked with, in the development of the system until it has provided the intended benefits. Where the system has simply been recommended, it has seldom been viewed as beneficial to the worker in and of itself.

Adaptation to Juvenile Justice System

In considering a goal-oriented system for the juvenile justice system, a number of concerns had to be addressed. First, the line workers (be they PACO, Observation and Detention workers, or Training School staff) historically had not considered themselves primarily clinicians. Much of the terminology and thinking in GOR is clinical and had to be adjusted or adapted to meet the needs of workers and children in the juvenile justice system.

Second, the identified problem is legally defined in addition to being an observable behaviour and the recording system must adjust to that reality. This is especially important given the advent of the *Young Offenders Act*.

Third, the juvenile justice system in Ontario is varied and complex and the client often has a number of individuals involved in his or her particular case. Because of this, data collection has been at times sporadic and uneven. It was crucial that every point in the system be contributing to a data base consistently.

Finally, the system must speak directly to the needs of the line workers to glean data for report writing, case conferences and referrals. In light of this, it was imperative that the recording system adopted facilitate the case management process.

Developing a Recording System for the Southwest Region

The recording instruments developed were the result of a lengthy process of theoretical consideration and information gathering. The actual steps that led to their development are presented below in chronological order:

Step One: Following the literature review, a number of representative active files were reviewed to assess the current recording approaches. Files at all stages and dispositions within the system were studied.

Step Two: Interviews were held with workers from all points in the system. Attempts were made to assess the actual, rather than the presumed, function of the recording system. Both the positive and negative points of the former system, and recommendations and desired improvements, were noted.

Step Three: Based on the information acquired and the theory of GOR, a sample data base and goal-oriented case arrangement plan were formulated. The data base reflected the salient information contained in the files. The case management plan was developed to provide a logical flow from presenting problems, to goals, means

of achievement and progress. The areas of concentration (legal, medical, socio-behavioural, family, placement, educational/vocational, and recreational) were based on the general areas of concern for most children in the juvenile justice system.

Step Four: The instruments in their preliminary form were applied to a number of cases by PACOs and supervisors. Some were applied to ongoing cases and some were applied to sample cases that represented different points in the process. Information and feedback were collected and a number of changes to the instrument were effected.

Step Five: The instruments were described and explained in a manual introduced at the training sessions. An example of a completed data base and plan of care was presented by PACOs from each of the areas.

Step Six: After a trial period, a committee was formed to monitor the use of the instruments in each of the offices. Recommendations were brought forward concerning the format of the instruments and improvements were made.

The importance of this committee cannot be underestimated. The members of the committee were able to respond constructively to the barrage of questions and concerns raised by fellow front line workers regarding the instruments. These individuals, in fact, became the strongest advocates of the new recording format.

Step Seven: The instruments in their final form were presented to the various levels of administration for input and approval.

Case Recording Instruments

Case Management Data Base: The information included in the data base was arrived at through a series of meetings and discussions. It was critical that the instrument provide a complete, organized and accessible repository of information for case planning. It was also necessary that the instrument be set up in a manner that facilitated the preparation of reports for the court or for referrals to other agencies.

Case Management Plan and Record: This instrument is designed to provide a ready access to the particular plan formulated for a child. At a glance, the problems, goals, means of achievement and progress can be noted. Client, worker and supervisor could readily appraise the essential aspects of the case management plan and could make revisions required.

In the Case Management Manual provided for all of the workers, every heading in both instruments is explained and examples are provided.

Training

The development of an effective training model for case management and recording was seen as critical to the entire project. The consultants met with representatives from each of the area offices to determine the most appropriate training format for each office. A general format was approved, with some changes for specific offices. Following is a description of the general training format.

Session One (half day): The first half day of training was hosted by a representative from the specific area. The representative presented an overview of the case management process to that point and responded to questions and concerns (of

which there were many) from their fellow workers. Second, a video tape of Lawrence Weed discussing the rationale and process of problem-oriented recording was viewed and discussed.

It was seen as imperative that the training sessions begin with the area offices themselves so that the workers could begin the system with a sense of owning the process rather than with the perception that it was imposed from outside.

Session Two (full day): The second training session was hosted by the consultants. The session began with a description of the theory of case management, followed by an introduction to case recording generally and to goal-oriented recording specifically. Next, a simulation that highlighted the need for precise case recording was employed. Third, the Data Base and Case Management Plan and Record were presented and described in detail. Following this, the participants applied the new instruments to one of their active cases. Finally, a discussion was held to consider the problems and advantages of the new instruments.

In each of the area offices, some time was dedicated to the specific concerns of that office. These included the idiosyncratic demands of certain judges, language difficulties, interaction with different agencies and geographic barriers.

Session Three (half day): The final session was once again hosted by the area representatives. The representatives prepared a sample case that included all the possible uses of the instruments and walked their fellow workers through the system from start to finish. The same case was then included as an appendix to the case management materials. From this point on, the new instruments were in use across the region.

The second training session followed closely after the first, but the third was presented a month after the second. This afforded time for the workers to integrate the information and raise new questions and concerns. The fact that the area representatives both began and ended the training session increased the opportunity for the workers to take more responsibility for the new system.

Following the final formal training session, the representatives met with the consultants regularly to monitor progress and to respond to difficulties with the instruments.

THE CASE REVIEW AND AUDIT PROCESS

The concept of case audit has been frequently described as a formal or official examination and verification of the case recording system of an organization. It suggests a one-time, external exploration of a case recording system, with the onus placed on external auditors to find something amiss within the system. While the concept of case audit was seen by the consultants as a necessary part of maintaining the case management process, and will be explored towards the end of this section, it was also noted that case audit tends to diminish the responsibility of internal authorities for ensuring that the system is functioning effectively. The concept of case review seems to be more dynamic and implies a more generic approach. Subsequently, this section will explore the theory and application of the case review process with respect to the "Case Management Plan and Record" and how the

process was adapted to help the case manager deal with children's treatment centres and institutions called "closed custody" for the purposes of this paper.

Case Review

The case review process has been identified among such successful management strategies as budget control, staff training, policy determination and programme development, employed in U.S. government departments. Case review may be described, in a broad sense, as a process by which information on an individual case is collected, stored and retrieved in a timely manner to assist in case decision-making (Poertner and Rapp 1980). While the case review process may be used in a variety of ways with various outcomes, like so many other concepts in the social services, it is necessary to define it within a particular service context. For the purpose of this study, the consultants and Ministry officials adopted the form of case review that develops ongoing feedback for supervisors and administration in addition to providing a structure for case decision-making. This process involves supervisor and supervisee meeting on a regular basis and contracting to carefully review each case in the total caseload within a given period of time. For the purposes of this project, the authors combined this form of case review with a proposal made by Rosalie Kane (Kane 1974, 418). In her discussion of the original Weed case recording process (Problem Oriented Recording), she stated that POR may be reviewed by asking four seemingly simple questions:

- 1) Is the data base complete and appropriate?
- 2) Have the problems been fully identified?
- 3) Is there an appropriate plan of action for each problem?
- 4) Is there any indication that the plan has been carried out?

The authors incorporated these questions in an instrument entitled "Case Management Plan and Record." The section "Progress Notes" contains an outline to be used as a formal case review format. The case review should be completed by the officer/case manager every three months. Every second review should be discussed with the supervisor and signed by both the officer and the supervisor to verify that a formal case review has taken place. If service to the young person ends before the conclusion of the six-month period, the case review format should be used as the closing summary and signed by both the officer and the supervisor. Material for the review should be recorded in the officer's case book.

The format for the formal case review is outlined as follows:

1. Client Contact (dates only)
 - a) Reported
 - b) Missed Appointments
 - c) Home Contacts
 - d) Collateral Contacts

This section requires dates of contact with the youth and with the various people attempting to help him. The information is drawn primarily from the officer's case book. Notes in the case book state the purpose of the contact and a brief summary

of the results of each contact. The case book is available to the supervisor at the formal six-month review of the case. Thus, case book data forms a valuable part of the Case Management Plan and Record.

2. Relevant Information

a) Reports from agencies

Where the young person is ordered to Open Custody, the open custodial resource is expected to report the required information to the case manager on a regular basis. The frequency of reporting by open custodial placements is negotiated with the agency during the negotiation of the formal agreement with it. An organization licensed under the *Children's Residential Services Act* is required by Section 35 of the regulations to develop a written plan of care within 30 days of admission of a young person and to review that plan of care regularly. The residential setting's plan of care relates closely to the overall Case Management Plan developed by the case manager for the young person. This relation is facilitated by the fact that the *Children's Residential Services Act* requires the plan of care to have the following components:

- i) a statement of client needs,
- ii) a statement of goals,
- iii) a statement of the means to achieve the goals,
- iv) date, and
- v) statement of anticipated plan for discharge.

A decision was made in the early stages of this project to take full advantage of the requirements described above and to build parallel components into Case Management Plan and Record.

Where the youth remains at home but is referred to a community agency for a specific service, it is anticipated that the agency will make regular three month reports to the case manager for inclusion in this section of the case review format. It is *incumbent* on the case manager to ensure that such reports are received at the specified times. Establishing a regular reporting procedure with community social service organizations and open custody resources presents a clear statement to such agencies that the case manager is indeed the case coordinator and, in fact, a *line of single case accountability* has been established between the ministry representative and the specific organization on behalf of the youth and his family.

3. Progress in Goals

This section requires a brief statement of the young person's progress. Goals with the associated progress are requested alphabetically. When a goal is completed, it is noted in this section.

4. Revisions in Case Management Plan

When a goal is revised, it is indicated by number in this section. New goals are added sequentially using a face sheet format.

The Case Audit Process

A system in draft form entitled "Case Management Audit Process" was recently approved at the senior management level in the region. The purpose of this process is to review the extent to which the case management policy and associated practices have been integrated into the juvenile justice system in the southwest region.

There are five major objectives of the audit process:

1. to examine the general operations of Probation Services;
2. to examine files to ensure compliance with case management policies and procedures;
3. to examine liaison elements between Secure Detention, Secure Custody, Probation and others to ensure that all relevant providers of service participate fully in the planning and delivery of services;
4. to assist a particular office in better operationalizing the case management system; and,
5. to refine the newly-introduced case management system.

It is meant to supplement the regular case review process established in each office.

The Case Management Audit Process consists of four components:

1. a review of Probation unit management practice;
2. a case file audit of Probation, Open Custody, Secure Custody cases, both open and closed;
3. a review of the unit's statistics on the monthly statistical report; and
4. an examination of the liaison elements of the Case Management process, e.g. training schools and observation and detention centres.

The unit management practice is determined by a written presentation by relevant staff and includes information on staffing, location, case assignments, schedule of supervision, workplan and data on resources available in the community. Probation supervisors are given the opportunity to expand on administrative issues and any case management information which the unit feels should be considered in the review.

The case file audit is based on a random sample of cases exploring data base material, case management plan and record, formal case reviews and casebook notes on both open and closed cases. A minimum of 25 and a maximum of 60 cases are examined using the same method of random selection for each caseload. The case file review collects case flow data to determine the case management practices as well as compliance with the *Young Offenders Act* (YOA) and the Case Management Policy, southwest region. More specifically, the review will examine the following content:

- i) Pre-Disposition Report (if one is required)
- ii) Data Base
- iii) Client Information Form

- iv) Case Management Plan and Record
- v) Progress Reports
- vi) Closure requirements

The file organization review under the YOA should include attribution of all materials to source, client data, court documentation, case supervision, agency/facility reports and clinical and educational reports.

The Statistical Review component reviews the unit's monthly Workload Summary Reports and Sentence Pattern Monitoring reports to identify workload trends in the particular area and compares statistical information with other units within the area, region and province, when available.

The Case Management Audit Process will generate the following reports:

1. an informal verbal report by the review team to the Direct Services Manager and Probation Supervisor, which will provide discussion and clarification of some areas before the formal written report is prepared; and
2. a formal written report to the Area Manager, the Direct Services Manager and Probation Supervisor, supported by raw data.

SUMMARY

In this chapter, the authors have described the development and early implementation of a case management system for young offenders in the southwest region of Ontario. The project emphasized the use of goal oriented recording and many of the features of case review systems and case audit formats.

Both front-line workers and middle management have viewed the case management process as a mixed blessing. The success experienced in the current project can, in part, be attributed to the attention paid to recognizing and responding to the needs of client, worker and manager without losing the theoretical integrity of case management.

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TWELVE

REFORM AS THE CREATION OF NEW USAGES: 1982-85 SYNOPSIS OF THE TAKING CONTROL PROJECT

Harvey Stalwick, Lavina Bitternose, Yvonne Howse Thomas and
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INTENTIONS IN 1982

Ideas for projects often come out of the blue and are followed by a scramble to find funds. This project began in a different way. In late 1981, Health and Welfare Canada, Welfare Grants Division, presented a challenging problem: social work education in Canada was out of touch with the social services relating to the social development and circumstances of persons of Indian ancestry. What could be done? Were we interested? The Social Administration Research Unit of the Faculty of Social Work, University of Regina, submitted a proposal on the understanding that participatory action research design and project team members of Indian ancestry would be key features. The three-year project was supported and the work began in late 1982. The project was to be a state-of-the-art review which we hoped would be of use to educators, curriculum planners, social policy analysts, politicians, community organizations, and citizens concerned with these issues.

The working title for the project, Indian and Native Social Work Education in Canada: A Study and Demonstration of Strategies for Change, was a clear statement of intent but too lengthy. The shorter title, Taking Control, was adopted. In our view, it captured an irrepressible concept then coming into its own: the concept of self-government. Other intentions were grouped around the following biases:

1. The history of social work education indicates that it thrives when working with people and organizations on critical issues of the day.

2. The strength of education for oppressed groups is in its utility.

"The purpose is not to provide an inferior education but a different education whose object will be to develop knowledge, skills and values with which the student can return to the community and contribute to its continual betterment." — Julius Nyerere in *Guinea-Bissau: Re-inventing Education*, 1976.

3. Thinking and learning are social, not isolated, activities.

"The we think determines the I think." — Paulo Freire in *Education: The Practice of Freedom*, 1976.

4. Participatory action research is a means of understanding conditions, being in dialogue and becoming involved in change.

5. Joint analysis by the participants and project team members is sharpened by attention to a struggle of opposites. Examples include: recognizing strengths in persons as the opposite of describing weaknesses and pathologies; cultural action as the opposite of cultural destruction; holistic perspectives on problem solving as the opposite of fragmentary static solutions; and authenticity as the opposite of lying.

These words of intention were easier to write than to live with. The complex and politically-sensitive issues we faced included awkward questions such as: Who is to be served by this project? How do we select key people? Once selected, how do we engage participants in the process of sharing ideas and tackling problems? How do we balance the tension between dominant society interests and culture-specific hopes? Is it possible to anticipate the means of influencing change during the project and following its completion? We knew we didn't know everything. The main decision during the start-up in 1982 was to be patient, consult, listen, and respect the concept of taking control.

THE FIRST EIGHTEEN MONTHS: RESPECT FOR LEARNING FROM THE EDGES

From September 1982 to March 1984, activities included participant observation in most regions in Canada, community-based action research in our own backyard of Regina and preparation for the 1984-85 National Policy Delphi procedure. Before describing each of these areas, it should be noted that our approach during this period was guided by a peripheral, rather than centre, perspective. That is, preferential attention was given to learning from the edges (the periphery). This learning took the form of contact with organizations and persons actively involved in critical issues concerning taking control of or influencing social service programmes, social development and educational opportunities for persons of Indian ancestry. We deferred consultation with various levels of government, educational institutions, professional associations and other representatives of power interests (the centre). While this decision was partly based on an inability to do everything at once, due to limited resources, it gave us a firm base for planning other phases

and helped answer one of our early questions, "Who are the main groups the project ought to serve?"

Participant Observation

The main reason for a low-key participant observation approach during the project's early stages was, first, we wanted to gain a profile of what was happening across Canada; second, to collect names of persons who could be involved as consultants or participants in our Policy Delphi procedure; and third, to better understand how organizations and professional persons were "out of touch."

We chose to immerse ourselves as much as possible in communities where persons of Indian ancestry were struggling with the results of unsuitable educational resources, inadequate or damaging forms of social services, institutional racism and limited attention to social development. In addition, we were looking for positive alternate models and we frequently asked, "What would you prefer?"

The term "participant observation" is used to describe our pattern of site visits, attendance at conferences, and travel with the Parliamentary Committee for Indian Self-Government Hearings. This Committee, formed in September 1982, began hearings in December 1982, and generated invaluable information for our project.

... what I observed at these hearings could be regarded as a modern day morality play performed on different stages with intensity, both in terms of issues touching the soul of a culture struggling for survival and in terms of a resolve to create different and better institutions. This morality play was played out by different players (those presenting briefs at the hearings) repeating very similar lines before virtually empty houses. Empty in that few people attended and the media, when present, was largely indifferent. However, the public record created by the evidence and proceedings will serve to confirm what former justice Thomas Berger observed after the MacKenzie Pipeline Enquiry: "Canada's native people are re-entering Canadian history."

For any social workers who attended the hearings, they would have learned that Native persons are not served well by any profession or institution and that the prevailing public attitude they must contend with is "haven't you assimilated yet into our multi-cultural society?" The concepts of self-government, entrenchment of inherent treaty rights and return of land were repeatedly debated together with the need to overhaul or replace the Indian Act and DIAND.

Social workers represent to many Native persons a social control image especially in the area of child welfare where harm too frequently has replaced well-intentioned care. Social assistance is described as a debilitating blight and those who administer this unfortunate last alternative share its stigma. The welfare payments and regulations are constant reminders of few opportunities, lack of awareness of self-worth, the bite of racism and the dismal failure of our political and bureaucratic institutions to respond. In summary the general impression was one of quality of social relationships which could be at best described as inauthentic (Stalwick 1983).

This lack of authenticity was clearly reflected in the House of Commons report on Indian Self-Government in Canada:

Throughout the hearings, Indian witnesses condemned the policies of provincial welfare authorities for removing Indian children from reserves in cases where, in the opinion of the authorities, they were not being properly cared for by their parents. Witnesses criticized provincial authorities for judging situations by non-Indian standards, which are culturally different. The imposition of non-Indian views of child care, through the enforcement of provincial child welfare policies on reserves, has had tragic effects on Indian family life (Special Committee 1983, 31).

Participatory Action Research

Participatory action research has been a central organizing concept for this project. One explanation of this methodology is that, for the project team to know the actual nature of aspects central to our review, it was essential to understand how others perceive and respond to day-to-day situations — their “world.” The philosophy of Paulo Freire refers to this activity as “naming their own world” and “the we think determines the I think.” Our project wished to connect with persons who, in a reflective critical way, were saying “we think” and were taking action on their understanding of circumstances such as their family, others’ children, underemployment or no jobs, housing and hopes for their communities — persons breaking the silence of their situation. Where appropriate, we would encourage and support this process. We saw this direct involvement as essential to gather data and to increase our own learning.

Our participant observation activities during the first months of the project turned up several examples of community groups and formal organizations beginning to experiment with alternate forms of caring and service delivery. Attention to children and families was a high priority. For many persons of Indian ancestry, this is what they “named” and they were prepared to push for change. Change actually meant direct control of, or influence on, the services and education for all involved. The following account of the Peyakowak Committee Inc. of Regina is an example of participatory research during the first 18 months of the project.

Our Own Back Yard

An early contradiction which showed up in our contacts in several provinces, was that Saskatchewan appeared to lack examples of serious attention to issues outlined by the project. Several exciting developments were occurring or planned in the provinces of Manitoba, Nova Scotia and Alberta. These developments seemed to contrast sharply with local examples of social service programmes and professionals that were “out of touch.” We reasoned that, in order for us to make useful comparisons and to have honest discussions with others, we should promote community-based action research in Saskatchewan, beginning in Regina. Through this local experience, we hoped to shape our goals, gain legitimacy and avoid ending the project with recommendations mainly for others. In the back of our minds was the caution about stones and glass houses.

Creating New Child Welfare Usages: Peyakowak (They Are Alone)

"Knowledge arises from human action. The production of knowledge is viewed as beginning with practical problems." — Participatory Research, African Adult Education Association, Nairobi, 1982.

The community-based action research described below is essentially a case study of "practical problems" in search for new forms (usages) of child welfare. Knowledge based on actions flowing from this research continues to inform our project.

Following a January 1983 project team visit to Winnipeg, the project's research assistant and three other Indian persons formed an informal steering committee. They were aware that practical problems being tackled elsewhere were overlooked in Regina. During this same month, public attention on the unexplained death of a 22-month-old Indian child, voluntarily placed in a Regina foster home, was an added catalyst for organizing.

An *ad hoc* Native Child and Family Service Committee was formed. This determined group wished to move beyond the one tragic death and examine in-depth problems and alternatives concerning care for children of Indian ancestry. They held a study conference in April 1983, during which they renamed their group "Peyakowak" — a Cree word meaning "being alone" or "one alone." They then began to lobby actively for changes in welfare for all children.

Recommendations from this first study conference included:

Learn from elders, communicate with others, share with those who still suffer, re-establish re-evaluation of the Family Services Act, stop apprehensions where alternatives exist, cross cultural awareness with non-Natives and do it ourselves (Peyakowak Committee 1983).

In chronological order, the main activities and developments of this action research effort during the first 18 months of the Taking Control project were:

1. Forming a child welfare lobby group. The provincial government of Saskatchewan was persuaded to review the *Family Services Act* (September 1983). The public review process which followed provided excellent opportunities for the project team to observe and hear, first hand, a variety of social service practices, attitudes and recommendations for change. This review process has led to the drafting of new legislation currently being debated in the province. Interprovincial comparisons of specific interest to this project have been made possible by this process.
2. Conducting study circles. During April 1983 to March 1984, weekly meetings with 15 to 20 persons were held. Over 250 persons of Native ancestry were involved, mainly on a self-recruitment basis. Bumper stickers, lapel buttons and the media coverage increased an awareness of the committee.
3. Incorporating the Peyakowak Family Support Program. This is an alternate form of family service agency for children and families of Indian ancestry who are considered "at risk" by the Provincial Department of Social Services. The basic aims are to prevent child apprehensions and to strengthen families. Operational funds from governmental sources and private foundations were sufficient to offer services on a continuous basis from the fall of 1983 to the present. The Taking Control project team has provided some consultation, occasional direct services and supervision

of volunteers. Full-time staff has ranged from three to five family support workers. Changes in the attitudes and practice methods of existing social workers are being monitored. A Department of Social Services supervisor reflecting on his experience stated:

... the intervention of the Peyakowak Committee into cases in which children have been at the point of permanent committal has exerted a quite profound effect on the psychology of all of us engaged in child protection services ... almost daily we encounter situations in which speculation quickly follows that maintenance of children in their natural environs might be achievable if we could work through resources such as the Peyakowak Committee to provide in-home support services.¹

4. Documenting issues on film. One of the most significant data sources has been the video taping of workshops followed by script determination during study circle sessions. This process yielded three analysis-response video tapes now used as standard research instruments in the National Policy Delphi procedure.

5. Providing a problem-posing agenda. Critical issues essential to this project continue to be identified by the Peyakowak Committee. Without this touchstone in the community we would have a limited agenda for our work and limited discussion of related issues elsewhere.

Policy Delphi Panel

The Policy Delphi methodology involves a network of persons referred to as a panel. They were selected from across Canada and became involved in a policy issue identification process. This problem solving activity, conducted anonymously, required considerable preparation during this period:

1. Determination of panel selection criteria, which comprised five groups of (1) social programmes/social service providers where taking control is the organizing concept; (2) consumer witnesses; (3) conventional social service programme/service providers; (4) educators and professional association representatives; and (5) media messengers.

2. Analysis of participant observation activities to identify persons to be invited to join the panel.

3. Planning a conference as the first phase in clarifying issues for consideration by the National Policy Delphi Panel. This Invitational Consultation on Curriculum conference was held in April 1984.

THE PAST YEAR: APRIL 1984 - MARCH 1985

"Reform is always the creation of new usages"
(Jose Ortega y Gasset).²

The main focus for the past year was contained in the project's subtitle: "A Study and Demonstration of Strategies for Change." Higher profile activities were introduced, including hosting conferences, publishing a newsletter, forming a National Policy Delphi panel and field testing three video tapes as analysis-response

research instruments. This work followed 18 months of participant observation, formation of a network of concerned persons and involvement in day-to-day child welfare issues, mainly in Saskatchewan. These activities were viewed as a demonstration of possible reform steps. Energy was directed at what might work rather than at an analysis of what doesn't.

Conferences in 1984

Conferences were conducted by the project as one way to share ideas, build group identity, record data (largely on video tape) and, through content analysis, select key themes for further attention. The concept of authenticity was a thread running through both April 1984 conferences held in Regina.

The first conference, the April 3-4 Invitational Consultation on Curriculum, was planned with the Saskatchewan Indian Federated College, Indian Social Work Department, in Saskatoon. Forty-five educators, programme administrators and graduate students in social work from across Canada participated. Most were of Indian ancestry. The key themes were: community development to create an agenda for learning; authentic education; limitations of professionalism; and rethinking parallel systems of social service delivery and training. Specific observations included:

- Social work needs to return to its basic principles, to go to the community and begin where the people are.
- The definition of social work should be broad, with a focus on the healing process, not just steps in social work.
- There is a fear of university courses, that students will become like the enemy. How can students avoid the distancing of professionalism? They need a guarantee that this is not going to happen.
- Does social work have the right words or concepts (client vs. friend vs. relative)? How can language help us to avoid losing the human perspective?
- How to overcome the abstraction and ideology of social work in middle-class North America.
- Power and control as part of colonization must be addressed as elements in authentic learning. Who controls resources, institutions, money, positions, jobs and curriculum?

The second conference, Strengthening Tribal Families, held April 5-6, was planned with the Peyakowak Committee of Regina. Over 90 persons registered, the majority of Indian ancestry. Several of the guests were families supported by the Peyakowak programme. The focus was on what succeeds in children's and family services rather than what doesn't. Resource persons and community people spoke on forms of caring which are authentic and respectful of culture. The main presentations were video taped.

The two 1984 conferences, and the momentum for change that they generated, confirmed the goals of this project and cast a die for work during the remaining months. As a project team, we now had a clearer sense of what the periphery was saying and where the established organizations and professions appeared to be "out

of touch." We also felt more confident about the nature of questions to pose during the first round of the Delphi procedure.

Delphi Procedure

Unlike attendance at conferences, the Delphi procedure allows interested persons to share ideas, solve problems and project future trends without the limitations of time, location or cost. Also, it differs from one-shot survey research because it is a continuing process. Information is shared, reflected on, responded to and then more information is shared for another cycle of reflection and response. It is similar to a correspondence course where others' answers are shared without identifying who said what.

The National Policy Delphi Panel was formed by inviting persons we had met or heard about during the last 18 months. Several were nominated by persons attending the Invitational Consultation on Curriculum conference. Others represented provincial professional associations of social work, schools of social work, Indian studies and various educational programmes. In total, 222 persons were invited to join the panel and, to date, 120 appear to be active. This is a larger group than we had originally planned.

During the summer and early fall, two of the video tapes used as research-response instruments were produced and field tested. These films were designed to reflect social problems and service delivery issues which, in Paulo Freire's terms, were "named" by persons of Indian ancestry. They were biased, with no attempt to provide a balanced documentary and identified issues dealing with the alienation of tribal persons in an array of legal and social services, the yearning to re-unite children with biological parents and the culturally genocidal features of many social work practices, specifically adoption.

The first distribution of questionnaires began in November 1984 and resumed in January 1985. The Part A questionnaire used, as starting points for response, the main themes from the April 3-4, 1984 Invitational Consultation on Curriculum. The Part B questionnaire was developed around the three video tapes: "Maintaining the Tribal Family," "Searching For My Children" and "Adoption: Where Does It Lead?" A copy of the three video tapes was sent to each Delphi panel member for viewing and response.

Peyakowak: Achievements

"Every achievement is a servitude.
It compels us to a higher achievement"
(Albert Camus, *Carnets*, 1966).

Communicating ideas and the possibility of change has been a feature of the Peyakowak participatory research. The Taking Control Project team has participated in several workshops, presented findings at conferences and provided consultation to a variety of groups. Peyakowak continues to provide key ideas and examples for discussion. Most presentations include video tape segments combined with case studies of hands-on work with persons, social agencies, social legislation and social policy questions. The images and the words of experienced persons encourage

communication with most audiences. The impact of video on some persons is dramatic — silence is frequently broken about a client's personal experiences or social worker's guilt about an agency's policies and practices. Contradictions are made clear in areas such as racism, social control, alcoholism and poverty. For many, once this silence is broken, dialogue takes the form of proposing alternatives and ways to bring about change. For others, the material and issues raised are disturbing and extreme. Perhaps an additional achievement has been to push beneath the surface of complex issues.

Achievements by the Peyakowak Family Support Program could be measured by the number of families and children receiving support, court orders revised, case conferences attended or media contacts. As important as these activities are, they only skim the surface. Below this surface is a unique style or spirit of working with children and families instead of working *for* them, which can sometimes result in being against the people. The major achievement of this approach, as experienced by the project team, has been the living demonstration of children reunited with their biological parents or extended family, the joy of finding alternatives to the existing pattern of separating children from families and the growth of persons affirmed as persons.

This style challenges many professional services and exposes two levels (or worlds) of perception. One level is made up of civil servants, bureaucrats (non-Indian and Indian) and specialists who offer or impose "solutions." The second level features unconditional caring at the grassroots level by community workers and volunteers struggling daily with people, in the midst of their situation. There are two different groups, two different professional levels, two different "political" perspectives. Why does this second-level style or spirit persist? Comparisons with similar developments in other provinces and elsewhere in Saskatchewan suggest the following considerations:

1. providing forms of caring which simply state through mutual sharing actions, "we are with you, we respect you";
2. forms of adult education — social learning — which free persons to think through their circumstances and struggle with alternatives;
3. community development activities which link individual circumstances with group and community action, addressing structural features of colonization, racism, classism, poverty and cultural genocide.

When combined at the same time, these features create a momentum of their own, with more benefit and energy than would result from three separate programmes.³

CREATING NEW USAGES IN COMMUNITY-BASED LEARNING

The challenge to rethink and change the field of child welfare profoundly cannot be avoided by the social work profession. As one respondent in the Delphi panel observed: "... we need to put our money where our collective professional mouths are." A challenge also faces educators and policy makers who are clearly urged to return (or go for the first time) to people in community to learn — to get "in

touch." An impression of related issues and the direction for desired change is conveyed in these words of participants in the Taking Control project:

All our lives we've been controlled by the larger society. Institutions, governments, organizations — they tell us how to live, how to raise our children, etc. Eventually, if someone does it for you all the time, you lose enthusiasm, motivation and individuality. For native people, this has been termed as cultural genocide. To prevent this, we need to take control again.

Recognize and acknowledge the beauty and strength of the people to determine their future.

Accentuate the positive in people's lives. Social workers have the responsibility to carry forward the community values. It is not a question of imposition but rather of perpetuation and maintenance.

Using community members to develop community assessment . . . citizens will name their own service needs. Professionals must be challenged to train students to meet community needs.

Formal education is useful if it is grounded in the practical experience of daily living. People teach, schools don't.

Community citizens teaching along with professors.

Human needs are basically the same, but culturally the reaching of those needs may be 180 per cent opposed, e.g., a society of I person singular (I, me, mine) versus a society of we, us, ours.

Learning how to see and understand the needs as they relate to other issues, colonialism, exploitation, vested self-serving functions of private, provincial and federal actions, church, schools and universities (Schools of Social Work).

Healing — rather than here's money.

Need to appreciate the concrete life experience of people's sufferings for racist behaviours.

Teach people to "enable," not disable.

The land, the earth. I don't think any Indian process can be comprehended without understanding the relationship to land use, even if some of the Indian people don't have one now.

Learning is community and people — almost lost perception of selves, abilities to solve problems by ourselves, stand up as people and create community.

The values and ethics of Native culture should be the basis of a completely new model of "social work." Whites, like myself (a social work professor), have virtually nothing that Native people need.

White society has lost the extended family — make a very great noise about the tribal/extended family, its strengths and capabilities as the major, if not only, social resource.

The Freirean approach is highly appropriate and congruent with Native values and culture. We must look beyond the hopelessness of a situation and visualize what we want to accomplish.

Each person has some idea of where he can best work for change . . . if these individuals' "visions" get drawn out and merge, you have the motivation for change as foundational to the C.D. (community development) process. Most C.D.'ers ignore this aspect.

Dominant society values of individualism (liberalism) imposed on a collective organic culture — the crisis in social work education is not about training for practice with the Native community, but rather the larger cultural debate about what we any longer mean by the use of the term "social."

Perhaps the "school" that creates the new social worker is a space in some existing community services, as groups and projects define the curriculum of the "students." Perhaps the community people are the teachers. Perhaps we all then decide how to address the social services problems in our community.

Immersion in community to be served.

Social workers in solidarity with people — personal is political.

In the winter of 1985, a form of community-based learning at the University of Regina, Faculty of Social Work, Community Education Centre in Prince Albert, Saskatchewan, featured the enrolment of 30 students of Indian ancestry in a community practices class. The class, divided into seven study groups, examined and acted on topics such as: design of a Native social work education programme for the region; Native child apprehension in Prince Albert; action research concerning pesticide health-related problems in rural areas; development of an alternate Native survival school; a proposal for establishing second stage housing for women and children in crisis; development of a self-help women's group for battered women; and an institutional analysis of the Prince Albert Indian Student Residence. Offering an applied class of this nature as a first regular class for students entering the social work programme was supported by the Taking Control project and monitored for its learning and curriculum planning implications.

In summary, Bertha Capen Reynolds, a noted social work educator, when referring to her career, declared: "If one word is needed, then, to begin to sum up what fifty years of living has taught me, this word is *relatedness*" (Cullen 1983, 15:56). In *Social Work and Social Living* (1951) she wrote: "Good professional social work is tested not by its difference but by its likeness to living well, living as a social being, and that it gets its stamp from being practiced by people who make a special study and discipline of how to live" (Cullen 1983, 15:58). She believed a part of living well was to struggle for social justice. In *An Uncharted Journey* (1963) she stated: "Social work exists to help people in need. If it serves other classes who have other purposes it becomes too dishonest to be capable of either theoretical or practical development" (Cullen 1983, 15:63).

Reynolds' wisdom is contemporary and forms a summary of issues noted in preliminary responses from participants in the Taking Control project. The one word *relatedness*, when expressed as community-based learning, invites the creation of new ways — new usages for social policy and social work practice which affect the social living of persons of Indian ancestry.

Reform as the creation of new usages will not happen in university meeting rooms or in seminars on Native child welfare issues and programmes. The one possible place for anything to happen is the community. Forty years ago, Woodrow Lloyd, a former premier of Saskatchewan, during a Radio College broadcast, spoke on the aims of adult education. His observations offer wisdom for our consideration:

We must then look carefully at ourselves and at our own communities. The challenge to think things out and work things out is in our own community as well as at higher levels. Study and action . . . will quicken consciousness of present shortcomings and develop a realization of our own power if we think and act collectively (Adult Education 1945).

NOTES

1. June 1, 1984, correspondence to the Laidlaw Foundation, Toronto, in support of the project proposal submitted by Peyakowak.
2. Ortega y Gasset, Jose, *Mission of the University*, W.W. Norton, New York, 1944, p.27. This view, written in the context of reform of higher education, can be applied to the field of education and social services identified by this study. The author states, "The reform of higher education cannot be limited, nor even its main features be limited, to the correction of abuses. Reform is always the creation of new usages Any reform movement which is limited to correcting slovenly or slipshod abuses . . . will lead inevitably to a reform which is equally slovenly."
3. See *They Are Alone: Preventing Child Apprehension and Strengthening Tribal Families*, a May 1984 document prepared by the Taking Control project staff. Available upon request from the Social Administration Research Unit, Faculty of Social Work, University of Regina.

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THIRTEEN

THE PROGRAMME OF THE SPALLUMCHEEN INDIAN BAND IN BRITISH COLUMBIA AS A MODEL OF INDIAN CHILD WELFARE

John A. MacDonald

The plight of native Indian children and youth in Canada has been a subject of grave public concern for the past two decades. During this time, public attention has been focussed on high rates of infant mortality, suicide rates among native teenagers six times the national average, a secondary school drop-out rate of 80 per cent, and widespread family breakdown contributing to disproportionate admissions of Indian children to the care of provincial child protection agencies (Canada 1980).

Readers will probably be very familiar with the shocking rates of child separation experienced by Indian families in Canada's western provinces since the early 1960s. In British Columbia, throughout most of this period, native children have comprised between 35 and 40 per cent of the children in the care of the Provincial Superintendent of Child Welfare.¹ A smaller but still significant number of Indian children have had substitute care in residential schools or with relatives and friends because of family problems.²

The causes of the widespread breakdown in Indian family life are complex, but they seem principally rooted in a lengthy Indian experience in this country of poverty, cultural deprivation, and enforced dependency. It is also the belief of this writer that the family problems of native Indians have been exacerbated by the failure of provincial child welfare policies and programmes to engage fully the capacity of Indian people to address family problems within their own communities.

In recent years, federal and provincial authorities have sought, by various means, to increase participation by native Indians in the resolution of child welfare problems. A model which reflects a high degree of native self-determination is the child welfare programme of the British Columbia Spallumcheen Band. This paper examines the history of this programme, its principal features, and its future prospects.

THE CHILD WELFARE EXPERIENCE OF THE SPALLUMCHEEN BAND DURING THE 1970s

The Spallumcheen Indian Band is located on a reserve which straddles both sides of the Shuswap River near Enderby at the northern end of British Columbia's beautiful Okanagan Valley. The Band is relatively small in number, consisting of approximately 400 members, over a hundred of whom reside off the reserve, principally in adjoining communities.

Most Canadians look back on the 1970s with some nostalgia as a time of prosperity and promise when young people could look forward to a steady improvement in lifestyle and material attainment. For most B.C. Indian Bands, this same period was one of growing awareness of their disadvantaged status in Canadian society and of increasing concern to prevent the erosion of their Indian culture by pervading pressures from the outside society. The Spallumcheen Band shared with other B.C. Indian bands high rates of unemployment and welfare dependency among its members. It also experienced family discord and social disruption occasioned by alcoholism and petty crime. This decade was especially traumatic for the Band's families; during that time 80 children were apprehended and admitted to the care of the B.C. Superintendent of Child Welfare (Mandell 1980).

To appreciate fully the shocked reaction of Band leaders and members at the loss of their children, it is important to recognize several features of provincial child welfare policy that characterized this period. First, although provincial child protection services had been extended to Indian reserves since the mid-1950s, they did not include preventive family counselling services as in the case of non-Indian families. The typical pattern was for non-Indian social workers to apprehend children in severe crisis situations and seek court ordered committals to care, followed by placement in substitute homes off the reserve. Second, given the absence of services for Indians on reserves to facilitate family re-unification, social workers tended to favour adoption or long-term foster care for the children who had been separated from their parents. Thus, children apprehended from families of the Spallumcheen Band, as in the case of other Indian children, often experienced much longer periods of foster care when compared to non-Indian children needing protection.³

While the widespread apprehensions of the children of Spallumcheen Band members caused trauma and heartache to the families concerned, they also posed a potential threat to the survival of the Band itself. Thus, at a time of rising political consciousness among Indians of their right to a better future in Canadian society, this future seemed jeopardized by the loss of their children to what were perceived as alien agents of assimilation. And, while many Indian bands gave priority in their political activities to negotiating improved economic arrangements for their people,

the Spallumcheen Band combined such initiatives with a vigorous attempt to reclaim control over the decisions affecting the well-being of their children.

Late in 1978, the Band hired Earl Shipmaker, a non-Indian social worker, to assist Band members to develop child care resources on the reserve. This resulted in increased utilization of the Band members' homes for voluntary placement of children requiring short or longer term care. Mr. Shipmaker also developed close working relationships with social workers from the district offices of the provincial Ministry of Human Resources in an effort to avoid, where possible, the off-reserve placement of Band children. However, these attempts to address child welfare problems at the Band level proved insufficient to tap the full caring potential of Band members. The most critical decisions continued to be made by staff of the Ministry of Human Resources. Moreover, by the beginning of 1980, approximately 25 children of the Band remained in the care of the Ministry in off-reserve foster homes.

1980 — A YEAR OF POLITICAL ACTION

In the early spring of 1980, the Spallumcheen Band began a series of decisive steps to achieve Band control over child welfare decision-making. Following consultation with the staff and legal advisors of the B.C. Union of Indian Chiefs, the Band Council passed a bylaw entitled "A Bylaw for the Care of our Indian Children," which assigned to the Band exclusive jurisdiction over any custody proceeding involving a Band child, whether on or off the reserve. However, when the bylaw was forwarded to Ottawa for scrutiny by John Munro, the Minister of Indian Affairs, he was at first disposed to disallow it, based on legal advice that the bylaw was probably unconstitutional. Subsequently, however, following intensive lobbying and minor changes in content, the bylaw was again submitted to the Minister, who this time chose not to exercise his powers of disallowance. Thus, the bylaw came into effect on September 3, 1980.

With this tacit, although far from enthusiastic, support from the federal government, the Band proceeded during the early fall of 1980 to mount a vigorous political campaign to persuade the Provincial Ministry of Human Resources to respect the child welfare authority of the Band conferred in the bylaw. This culminated in a well-publicized protest march by some 600 Indian men, women and children, which ended in a demonstration in front of the Minister's home in the fashionable Shaughnessy district of Vancouver. The following day, after an extended discussion between Chief Wayne Christian and Grace McCarthy, B.C.'s Minister of Human Resources, a short hand-written agreement was concluded. The agreement read as follows:

The Minister of Human Resources agrees to respect the authority of the Spallumcheen Band Council to assume responsibility and control over their children. The Minister of Human Resources agrees to the desirability of returning Indian children of the Spallumcheen Band presently in the care of the Minister . . . to the authority of the Spallumcheen Band and both parties

agree to work out an appropriate plan in the best interests of each child presently in care, assuming that the Spallumcheen Band will develop necessary resources in negotiation with the federal government.

During the next six months, Chief Christian and other employees of the Band moved expeditiously to consolidate a Band child welfare programme within the mandate provided by the new bylaw and within the accord reached with the Minister of Human Resources. On April 1, 1981, a formal agreement was signed between the Band and regional officials of the Indian Affairs Branch whereby the Branch undertook to contribute \$263,000 to the Band's child welfare programme for the 1981-82 fiscal year.⁴ The agreement was to cover a five-year period terminating in 1986, with the amounts of federal contributions to be negotiated annually. The Band agreed to provide regional officials of the Indian Affairs Branch with annual audited financial statements as well as monthly reports on programme activities.

With the foregoing agreements in place, the Band social worker met in May 1981 with the Minister of Human Resources and worked out arrangements for transferring the care and supervision of Band children then in the care of the Ministry of Human Resources to the Spallumcheen Band. This entailed the formulation of a written care plan for each child signed by the Band social worker, the Ministry social worker, the foster parents and, in some cases, the natural parents and children. These individual care plans were subsequently approved by the Band Council and incorporated in case records for each child. This process was completed within three months, entailing for the most part no transfer of children from their foster homes but rather the assumption of supervision of existing foster care arrangements by the Band social worker. Also, significant from a legal perspective was the fact that the written care plans, while transferring supervision of the children to the Band, contained a statement that the B.C. Superintendent of Child Welfare would continue to serve as legal guardian of each child. It was, therefore, evident that the provincial child welfare authorities were not prepared to acknowledge legally the jurisdictional claims of the Band's child welfare bylaw. I turn now to an examination of the principal features of this bylaw (Spallumcheen 1980).

THE SPALLUMCHEEN BAND CHILD WELFARE BY-LAW

The preamble to the bylaw stresses the right of native Indians to self-determination and emphasizes the right of the Spallumcheen Band to care for its children, who are considered its most vital resource in ensuring its integrity and future. The preamble also voices concern that, in the past, a high percentage of Indian families experienced breakdown as a result of the often unwarranted removal from the reserve of Indian children by non-Band agencies, thereby hurting "our children emotionally," fracturing "the strength of our community," and "contributing to social breakdown and disorder within our reserve" (Bylaw preamble).

The main body of the bylaw assigns to the Band exclusive jurisdiction over any child custody proceeding involving a child (defined as an unmarried person under age 21) who is a member of the Band, regardless of residence. For purposes of child protection, the Chief and Band Council or any persons authorized by them

are empowered to apprehend an Indian child and bring the child before a meeting of the Chief and Band Council within seven days in the following circumstances:

- (a) when a parent, extended family member or Indian guardian asks the Band to care for a child;
- (b) when the child is in a condition of abuse or neglect endangering his/her health or well-being;
- (c) when the child is abandoned;
- (d) when the child is deprived of necessary care because of death, imprisonment, or disability of his/her parents (Section 7).

Where a child has been apprehended, the Chief and Band Council are authorized to decide on placement, guided by Indian customs and preferences. In making this decision, they are required to consider the wishes of the child if he is old enough to appreciate his situation. When the child cannot be immediately returned to his family, placement is to be made according to the following order of preference:

- (a) with a parent (presumably the parent not exercising custody at apprehension);
- (b) with a member of the extended family living on the reserve;
- (c) with a member of the extended family living on another reserve;
- (d) with a member of the extended family living off the reserve;
- (e) with an Indian living on a reserve;
- (f) with an Indian living off a reserve;
- (g) as a last resort, with a non-Indian living off the reserve (Section 10).

However, in reaching placement decisions, the Chief and Band Council are required to give paramount consideration to the best interests of the individual child (Section 10).

Further sections of the bylaw authorize a General Band Meeting to review a decision on placement at the request of any Band member, including the child's parent. Review decisions are to be made by majority vote of those attending in accordance with Indian customs and the order of preferences. Upon review, the decision of the General Meeting may be to return the child to his parent(s) or place him in another home (Sections 12, 15, 18, 19, and 23).

THE SPALLUMCHEEN CHILD WELFARE BYLAW COMPARED TO CONVENTIONAL CHILD WELFARE LEGISLATION

This bylaw differs in a number of ways from conventional child protection statutes. Significantly, it assigns apprehending, fact-finding, and disposition powers to the same persons, namely the Chief and members of the Band Council. These persons, therefore, are given both protective intervention and judicial functions. Moreover, both placement and review decisions are made, not in the context of a formal judicial hearing, but rather by discussion at a Band Council or General Band Meeting, followed by a vote of those present. An obvious danger exists that decisions affecting the future of children could be made without the safeguards of an impartial judicial hearing. However, Indian leaders tend to discount this potential problem, pointing

to the protracted pattern of careful and consensual decision-making typical of Band Council meetings. Moreover, to date this problem has not surfaced in the application of the Spallumcheen bylaw, since apprehension has been necessary only on four occasions during its first four years of operation and the parents of the children apprehended have subsequently supported the placement decisions of the Band Council. In all other cases, children admitted to the care of the Band since enactment of the bylaw have been admitted at the request of their parent or parents.

The Spallumcheen Child Welfare bylaw can also be distinguished from regular child welfare statutes in the priority assigned to native Indian foster care placements, commencing with those on the home reserve. Here the Band is concerned equally with the well-being of its children and with its future as a collective Indian community. Whether, in these circumstances, the welfare of the Indian child could become subordinated to the collective concerns for future Band strength and continuity would seem to depend largely on the resources available for child-care on the reserve. Assuming the availability of such resources, the priority assigned in the bylaw to native Indian placements goes a considerable way towards ensuring that most children admitted to care will have their personal needs met while retaining an affinity with the traditions and culture of the Spallumcheen Band.

Finally, the Spallumcheen bylaw can be contrasted with many Provincial Child Protection statutes in Canada in that it requires the Band to consider the wishes of the Indian child, when he is old enough to appreciate his situation, before making a decision as to custodial or living arrangements (Section 10(ii)). This may be contrasted with the B.C. *Family and Child Service Act*, also enacted in 1980, which permits a judge of the Provincial Family Court to make a disposition in a child protection case without seeing the child or being apprised of his wishes (British Columbia 1980).

SOME KEY FEATURES OF THE SPALLUMCHEEN BAND CHILD WELFARE PROGRAMME

In our society, child welfare services tend to be regarded as residual services activated to sustain families in crisis or to provide substitute care for children whose health and well-being would be in serious jeopardy if they remained in their homes. Given this residual societal mandate, child welfare services have also evolved separately from other human services such as education, recreation and health services. A key feature of the Spallumcheen Band child welfare programme is the degree to which traditional child welfare functions are integrated with other services promoting the collective well-being of the Band community, its families, and its children.

Within the mandate of the child welfare bylaw, and under the general guidance of the Chief and Band Council, the programme employs a Director of Child and Youth Services who is responsible for the coordination and supervision of the work of direct service staff members. These include a family support worker who is responsible for protective services and foster care services to the children admitted to the care of the Band. The child welfare staff also includes a preventive youth counsellor who provides individual and group counselling services to school age children,

especially those experiencing difficulty in school or encountering stressful family situations. This counsellor works in close liaison with teachers in the local elementary and secondary schools. Since 1983, the Band has also employed a child care worker to provide special therapeutic services to children of the Band with severe speech and hearing problems and related learning, behavioural or emotional problems.

While these services are both preventive and remedial, the Band also employs within its child welfare programme a group recreation worker whose functions include the organization of special cultural and recreation activities for older teenagers designed to foster healthy leisure-time pursuits and identification with the collective activities and traditions of the Band.

Since commencement of the programme four years ago, the Band has been able to provide foster home or group home placements on the reserve for all children admitted to care. A group home capable of serving up to eight children in the age range of 10 to 14 years was opened in August 1982. This home provides full-time employment for two house parents and part-time employment for one relief worker.

Child welfare staff members work closely with a registered nurse who, in addition to providing basic nursing care and referral services for band members, offers guidance to band members in family planning and homemaking skills. Child welfare staff also work in close liaison with the Band's alcohol counsellor.

Although the Spallumcheen Band child welfare programme has much in common with progressive child welfare programmes in other settings, the observer is struck by the level of commitment and energy displayed by the staff members, most of whom are women. One also senses a high degree of pride in the work accomplished over the past few years, especially in the area of preventive programming. In addition, the concern for the Band families extends beyond the boundaries of the reserve to families in crisis elsewhere in the province. Thus, an important service rendered by the Band consists of offering placement resources for the temporary or long-term care of Band children apprehended by provincial child welfare staff in off-reserve communities.

Any discussion of the Spallumcheen programme would be incomplete without acknowledgement of the leadership and organizational skills of Chief Wayne Christian. As a result of his efforts, the Band has been able to negotiate annual renewals of the funding arrangements with the federal government, which have permitted consolidation and expansion of the programme. Chief Christian has also been responsible for negotiating loans with the Central Mortgage and Housing Corporation, which have enlarged and modernized the housing stock on the reserve in recent years. This in turn has enabled the Band to develop necessary on-reserve placement resources for children. In addition, Chief Christian has facilitated an extensive programme of in-service training for staff and Band members, focussing both on practical skills and cultural awareness. Finally, he has maintained positive contacts with social work professionals throughout the province, thereby contributing to continuing professional support for the Band's programme.

The Spallumcheen child welfare programme is not without its problems. Alcohol abuse and unplanned pregnancies among teenage Band members continue to place

many children at risk. Moreover, young persons returning to reside on the reserve following lengthy foster care often display serious behaviour problems predictive of future instability in family relationships. The Band has also had difficulty attracting and retaining professionally qualified persons to serve as programme director. The most serious problem, however, is the uncertain future of the programme, in light of its vulnerability to legal attack on constitutional grounds and current federal policy toward tripartite arrangements in Indian child welfare. These subjects will now be addressed.

LEGAL VULNERABILITY OF THE SPALLUMCHEEN PROGRAM AND THE ALTERNATIVE TRI-PARTITE MODEL

We noted earlier that the Minister of Indian Affairs in 1980 chose not to exercise his authority to disallow the Spallumcheen Band bylaw, in spite of advice that it lacked constitutional validity. This advice was probably based on the absence of clear authority in Section 81 of the *Indian Act* for Indian Bands to legislate in the field of child protection. This being the case, any such bylaw would run the risk, in a court challenge, of being declared unconstitutional as infringing on the general legislative powers of the province in this field.⁵ A clear indication that the federal government has adopted this view of the law is seen in a policy statement issued by the Department of Indian and Northern Affairs on May 1, 1982 (Canada 1982b), part of which reads as follows:

Indian people living on or apart from reserves are governed by provincial and territorial legislation pertaining to the protection and care of children. (p. 8)

Section 91(24) of the British North America Act empowers Canada to enact legislation in respect of Indians and Indian lands. Canada has not exercised this discretionary power in respect of legislation to govern the protection and care of Indian children and, accordingly, Section 88 of the *Indian Act* makes Indian people residing on or apart from reserves subject to provincial child welfare laws . . . (pp. 11-12)

This interpretation of the law was reinforced in practice in October 1982, when the Minister of Indian and Northern Affairs disallowed a child welfare bylaw of a small Indian Band in the East Kootenay area of British Columbia. The bylaw in question was almost an exact copy of the one establishing the Spallumcheen child welfare programme.⁶

Although it is clearly within the powers of the federal government to amend the *Indian Act* to grant Indian Bands legal authority to enact child welfare bylaws, it appears that the federal authorities have decided to pursue a different course of action without recourse to legislative change. Thus, the same policy statement which endorsed provincial legislative jurisdiction in child welfare gave official support for the negotiation of tripartite agreements among Indian child welfare organizations, the federal Indian Affairs ministry, and provincial child welfare authorities for Indian child care agencies' delivery of welfare services to native families in designated areas (Canada 1982b, 13-19). The first such agreement came into effect on February 1, 1982, when the federal and Manitoba governments and the Four

Nations' Confederacy signed an agreement to delegate to the Confederacy major responsibilities for the development and delivery of child welfare services on Indian reserves in western Manitoba (Canada 1982c). Since that time, agreements have been struck covering services to all Indians on reserves in that province.

The experience to date under the Manitoba arrangements will be of great interest to native peoples and social workers throughout Canada. For the purposes of this paper, however, it is useful to comment briefly on the comparative strengths and weaknesses of the Manitoba model compared to that adopted in B.C. by the Spallumcheen Band.

From the beginning, the Spallumcheen Band programme has been limited to Band members and has been delivered through the authority of the Band Council. Adjoining bands, which share a common historical and cultural heritage, have not been the beneficiaries of similar or shared native-administered child welfare services. In contrast, the Manitoba model has evolved in a manner which has facilitated the comprehensive delivery of child welfare services through native agencies representing the larger organizations of tribal councils or amalgamations of bands. This model draws together the child caring energies and resources of tribal groups sharing the same linguistic and cultural heritage. Thus, provided adequate funding is made available by the federal government, the Manitoba system seems capable of concerting the full potential of native professional and volunteer resources to serve native people residing in contiguous communities. This model, therefore, avoids the splintering of services organized around separate Band councils.

The Manitoba tripartite model appears to envision active support by provincial child welfare authorities, coupled with collaboration between social workers employed by the provincial and these from native child welfare systems. Assuming the cooperation of provincial authorities, this collaboration could have positive potential for the coordinated delivery of services to status Indians off reserves. In British Columbia, the Spallumcheen Band programme operates as a small island of native child welfare surrounded by a provincial child welfare system perceived as threatening to the programme's survival.

One potential shortcoming of the Manitoba model is that it incorporates the *Manitoba Child Welfare Act* in defining standards of child protection, modes of judicial decision-making, and dispositional options available when a child is in need of protection. One of the strengths of the Spallumcheen model is that its bylaw expresses Indian standards of child care while ensuring decision-making by Band members designed to foster in Indian children a strong and positive sense of Indian identity.

CHILD WELFARE AND URBAN INDIANS

From the foregoing discussion it is evident that both the Spallumcheen and Manitoba tripartite models focus essentially on the child welfare problems of Indians on reserves. Neither model is explicitly designed to address the problems of status and non-status Indians in cities. The present reality in British Columbia, however, is that most families of Indian descent currently reside in towns and large cities,

and demographic forecasts indicate that the trend toward urban migration will continue in the coming years.⁷ Given the serious problems of unemployment, racial prejudice and culture shock experienced by most urban Indians, it seems clear that native Indian child care problems will become increasingly prevalent among urban Indian families. This is not meant as a criticism of either the Manitoba or Spallumcheen Indian child welfare models. It does emphasize, however, that policy-makers should give priority to urban-based delivery systems which maximize native Indian involvement in services, both to status and non-status Indians.

SOME CONCLUDING COMMENTS

I noted earlier that the policy stance of the Department of Indian Affairs for the past three years has been to support tri-partite child welfare service delivery for native Indians on reserves. This, of course, involves the active support and participation by provincial child welfare authorities as well as support by native Indian bands and organizations. It is significant that as of December 31, 1985 no tripartite agreements have been entered into in the province of British Columbia. At the provincial government level, this in part reflects a lengthy conservative stance of the government on social services, coupled with reduced priority attached to child welfare services for the past two years.

There is also an evident reluctance, on the part of native Indian leaders in this province, to embrace tri-partism. This seems to be in part based on the long-standing adversarial relationship between the B.C. government and Indian organizations stemming from the government's refusal to acknowledge the legitimacy of native land claims. It could also reflect a belief on the part of many Indian leaders that tripartite arrangements in the field of child welfare could impede progress toward Indian self-government. In this connection it should be noted that the 1983 Report of the Special House of Commons Committee on Indian Self-Government in Canada specifically identified child welfare as an area over which a band, or group of bands, should have the option to exercise full legislative and policy-making powers (Canada 1983, 63-64).

The current constitutional negotiations on Indian self-government between native organizations and the federal and provincial governments are also relevant to Indian child welfare concerns from a broader vantage point. It seems that the goal of self-government, while partly a political and cultural concern to native peoples, is also closely linked to legitimate and long-standing economic concerns. Native leaders recognize that viable self-governing structures will only be achieved when Indian people can gain access to self-sustaining economic resources. In the absence of such resources, child welfare services, no matter how enlightened and progressive, are unlikely to resolve the persistent problems of Indian poverty and government dependency.

This chapter has attempted to shed light on the emergence, content, and present status of the Spallumcheen child welfare programme. This programme would not have come about were it not for the organizational skills and political activism of the leaders and members of the Spallumcheen Band. Moreover, the activism that helped shape the Spallumcheen programme also closely linked native-controlled

child welfare services to self-determination in the economic, cultural, and political spheres. These goals are now being pursued by Indian people across Canada in protracted political and judicial engagements. As professional social workers committed to the well-being of children and young people everywhere, we should render the Indian people our full support in their struggle for a secure and promising future for their children.

NOTES

1. Statistics provided by the B.C. Ministry of Human Resources reveal that for fiscal year 1980-81 native children, status and non-status, comprised 36.7 per cent of all children in care in British Columbia, a reduction of 2.5 per cent from fiscal year 1978-79. During 1980-81, native children constituted 42.7 per cent of all children in foster homes in the province. Johnston, Patrick, *Native Children and the Child Welfare System*, Ottawa, Canadian Council on Social Development, 1983, p. 27.
2. During fiscal year 1980-81 an average of 1313 children with registered Indian status in B.C. were residing in the homes of relatives or friends because of family problems. Report of the Child Care Task Force on B.C. Indian Child Care, Ottawa, Department of Indian and Northern Affairs, May, 1982a.
3. In a report prepared for the B.C. Royal Commission on Family and Children's Law, W.T. Stanbury found, on the basis of 1972 statistics, that 53 per cent of the status Indian children in the care of the Superintendent of Child Welfare had been in care for longer than five years, compared to 23 per cent of the non-Indian children in the Superintendent's care. Stanbury, W.T., *The Social and Economic Conditions of Indian Families in British Columbia*, Report prepared for the B.C. Royal Commission on Family and Children's Law, Vancouver, 1974.
4. Agreement between the Spallumcheen Band of Indians and Her Majesty The Queen in Right of Canada, April 1, 1981. This agreement has been renewed annually since 1981. The budget for 1984-85 is \$404,000.
5. This view seems to be supported by the Supreme Court of Canada decision in the case of *Natural Parents v. Superintendent of Child Welfare* (1976) 60 D.L.R. 148. which held that the B.C. *Adoption Act*, a child welfare statute, had full application to status Indian children. It remains to be seen, however, whether the recognition of "existing aboriginal rights" in the new *Canadian Charter of Rights and Freedoms*, will lead to a modified judicial interpretation of an Indian Band's jurisdiction to legislate in the field of child welfare.
6. Declaration of Hon. John C. Munro, October 29, 1982, disallowing bylaw No. 3-1982, a bylaw for the care of Indian Children enacted by the Tobacco Plains Band of Indians, in the Province of British Columbia, at a meeting held September 21, 1982.

7. In 1980, researchers from the Department of Indian and Northern Affairs predicted that, by 1986, 42 per cent of status Indians in B.C. would be residing off reserves. Andrew Siggner and Chantal Locatelli, "An Overview of Demographic Social and Economic Conditions Among B.C.'s Registered Indian Population," Research Branch, Department of Indian and Northern Affairs, Ottawa, 1980, p. 11. It has also been estimated that the number of non-status Indians, most of whom reside in towns and cities, exceeds the population of registered Indians in B.C. by 20 per cent. See Gene Elmore et. al., "Survey of Adoption and Child Welfare Services to Indians of B.C.," Report to the B.C. Department of Human Resources, 1974.

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FOURTEEN

MANITOBA'S INDIAN CHILD WELFARE SERVICES: IN THE BALANCE

Peter Hudson

BACKGROUND

The experience of Manitoba's Indian¹ people with the child welfare system has been similar in other parts of North America, and in Canada, particularly in north-western Ontario, the prairie provinces and British Columbia. Before 1966, there was no formal basis for the provision of child welfare services to registered Indian people on-reserve. There were three ways in which Indian children were separated from their families and placed in some form of substitute care. The first way was through the residential school system, in the name of education. The second way was in the name of health care; children were (and still are to a lesser extent) placed in substitute care where medical needs could allegedly be met only in an urban centre. Both of these measures separating families were taken under dubious legal authority. In the third instance, Indian children were placed in substitute care under the authority of the Child Welfare Act where the family, while having registered Indian status, was living off the reserve and the children were judged to need care and protection.

In 1966, a bilateral agreement was concluded between the province of Manitoba and the government of Canada. It was intended partly to resolve a long-standing jurisdictional dispute between the two governments in child welfare matters. This dispute revolved around both the payment for, and the delivery of, services to Indian families. The province argued, based on Section 91 of the *Indian Act*, that the federal government had responsibility in both regards. The federal government argued that

under Section 88 the provinces had jurisdiction and responsibility in all matters not mentioned in the *Indian Act*. There being no explicit reference to child welfare, it followed that this area was the responsibility of the provinces. The 1966 agreement recognized federal responsibility to defray the costs of child welfare services for Indian people, which the province agreed, in turn, to deliver. It covered only 14 reserves in the southern part of the province. With some exceptions, the delivery agent was to be the three rural Children's Aid Societies which, among them, already covered most of the area in question. In the northern and remaining southern parts of the province, where child welfare services were provided by the regional offices of what is now the Department of Community Services and Corrections, there was no explicit agreement except that the Department of Indian Affairs accepted billings for the cost to the province of maintaining Indian children in substitute care. Here the pre-1966 policy was pursued: namely, intervention only in "life or death" situations.² This policy represented the extreme end of the active-reactive continuum of child welfare services.

The consequences for Indian families under both arrangements were predictable and are by now well-documented. The "life and death" policy gave rise to last resort interventions when the removal of the child from family and community were inevitable. Young, inexperienced, urban-trained workers, who faced additional problems of geography, and had no knowledge of the community's social or kinship networks and resources simply airlifted children out to a more familiar environment — more familiar to the worker, not to the child. In the south, more and more Indian children came into care for the opposite reason. The phenomenon of "demand" rising to meet new or expanded service is well-known to service planners. At this period in its development, the child welfare system as a whole, strongly emphasized investigation and protection at the expense of prevention programming. Thus, the typical form of intervention was apprehension and removal.

The statistical basis for the foregoing description is limited. For the most part, it relies on "snapshot" data gathered for the latter half of the period. It does document the gross over-representation of Indian children in the child-in-care population which, we can assume, escalated after 1966. For example, in 1980, 4.3 per cent of all registered Indian children were in care in Manitoba, compared to 0.96 per cent in the general population (Johnson 1983, 56). Figures for one region, however, do document the significance of the 1966 Agreement. These show 15 registered Indian children in care in 1963, rising to 280 in 1977. Interestingly, the figures drop off around 1978 (Manitoba, 1982). At this time, this particular agency had moved in the direction of prevention programming and had developed a more consultative relationship with the community.

Other parts of the picture which emerges from statistical and anecdotal evidence from the 1966 to 1980 period are the overwhelming tendency to use non-Indian substitute care for Indian children, a strong impression that Indian children in care and their original families received inferior service (especially advocacy), and a prognosis for Indians graduating from the system at the age of majority that was much less promising than for their non-Indian counterparts. Of particular interest (and concern) was the practice of placing Indian and other native children for adoption in the United States. This practice was more common in Manitoba than in other

provinces. One of the more dramatic examples was the case of an Indian child placed with a single man in the southern U.S. The child was subjected to continuing sexual abuse. He is now serving 15 years to life at the age of 19 for murdering his adoptive father.

This short but dramatic period of contact between the child welfare system and Indian people has been well documented elsewhere (Johnson 1983; Hepworth 1980). It is presented here in brief as background for readers unfamiliar with the concerns and problems which gave rise to the search for alternatives. Analysis which places this period in the context of the colonial relationship, and which shows the child welfare system as a latter-day part of the apparatus of colonialism, is also elaborated elsewhere (Hudson and McKenzie 1981, 63-66, 87-88). The primary purpose of this chapter is to trace the search for the alternatives and to present an assessment of the model which has emerged in Manitoba.

A NEW MODEL EMERGES

By the late 1970s, the latent anger began to be more overt. Behind the charge of "cultural genocide" levelled at child welfare authorities, planning began at the political and organizational level. In 1979, the Four Nations Confederacy, representing registered Indian people of Manitoba, hired a child welfare consultant to help develop a province-wide strategy and action plan for the devolution of child welfare services to Indian people. This move shifted activity from a few, *ad hoc* local initiatives, under which bands had entered into agreements with the Department of Indian Affairs and Northern Development (DIAND) to hire workers to provide non-statutory services, to a coordinated province-wide initiative to lead an Indian-planned and controlled child welfare service delivery system. This initiative culminated in the signing of the Canada-Manitoba-Indian Child Welfare Agreement in February 1982. The Agreement set out the general principles, process and financial arrangements for the provision of on-reserve child welfare and related family services. It was an enabling document, in that, for it to come into effect, subsidiary agreements had to be signed by "any band or group of bands." Through the Master and Subsidiary Agreements, the Government of Canada agreed to fund services, the province agreed to empower them, and the Indian signatories agreed to design and deliver them. In most instances, the Indian signatories to the Subsidiary Agreements were representatives of new child and family service agencies established by the Tribal Councils to operationalize the provisions of the Master Agreement.

Before the signing of the Tripartite Agreement, two other significant events had occurred. The Dakota Ojibway Tribal Council established on its own initiative the Dakota Ojibway Child and Family Service (DOCFS). It was established under two separate bilateral agreements, for funds from DIAND under a specific Contribution Agreement and for the mandate from the province (except for adoption services which were phased in two years later). DOCFS opened its doors on July 1, 1981, providing services to eight participating bands. Also, in July 1981 the Manitoba Keewatinowik Okimakanak (MKO) was formed. MKO now acts as the political

representative of the 24 northern bands. The reasons for the division of representation between north and south were many and varied. One of the lesser reasons, important in this context, was the northern Chiefs' objection to the principle of tripartite negotiations on the child welfare issue, on the basis that these eroded the special relationship between the Indian nations and federal government. They argued for bilateral negotiations and a federal *Indian Child Welfare Act* similar to the *Indian Child Welfare Act* of 1978 passed in the United States.³ Most Chiefs shared this concern, and the debate was primarily one of strategy, with proponents of tripartite negotiations arguing that they were the only way to achieve important short-term goals quickly.

A year later, MKO did sign its own Tripartite Agreement on behalf of its member bands, and the AWASIS Child and Family Services was established as the delivery agency. This shift arose from DIAND's refusal to consider bipartite negotiations. DIAND, probably unnerved by the unilateral declaration of 'the Spallumcheen Band in British Columbia (MacDonald 1981 and 1986), always cognizant of the delicacy of federal-provincial relations and aware of its own lack of expertise in child welfare, issued a May 1982 directive stating, as policy, that tripartitism was the sole vehicle for future development of Indian control of child welfare services across Canada (Canada 1982, Circular G-1). Thus, by early 1983, six Indian child and family service agencies had been established in Manitoba, involving the transfer of delivery from provincial offices and the CASs to all but one of the Indian Bands in the province.

THE MODEL DESCRIBED

The drive and inspiration for these developments was twofold. Politically, they must be seen within the context of reaffirmation of Indian self-government, and as part and parcel of the movement towards decolonization. The special significance of child welfare in this context is that, unless the assimilative effects of hundreds of Indian children being raised in non-Indian environments were arrested, Indian nations would cease to exist as a distinct entity and there would be no basis for self-government. Where the reserve system, the residential school system, training and employment placement programmes and so on had failed to assimilate, the child welfare system seemed likely to succeed. Assuming some control over judgements about the removal of Indian children, the choice of substitute care, the duration of care and the role of the biological family appeared to be imperative. This argument alone is sufficient justification for the devolution of control of child welfare services. However, arguments based on service issues were also asserted. Basically, these arguments were that a different and better quality service would be delivered by local residents familiar with the fabric of the community, its families and networks, language and culture.

Both political and service objectives were met through a strong commitment to a prevention philosophy and to a community-based service. With regard to the latter, although the service's mandate passes through a Regional Board or Committee, attached to a central supervisory and resource staff, the centrepiece of the system is a Child Welfare Committee organized at the community level. The committees are variously composed and appointed, but the norm is a committee made up of

the paid caregivers in the community (such as NADAP workers and Home and School coordinators), a representative of the Band Council, and other residents who have an interest (often elders). Each Committee appoints one representative to the regional level of decision-making. The community base for service delivery and decision-making is not dependent solely on an indigenous worker, but also on the local group to whom the worker is accountable.

This level of voluntarism is markedly different in degree and kind than voluntarism which passes for community participation elsewhere. First, the small size of the service unit means that the committees are close to and knowledgeable about each community. The traditional Board, serving a large catchment area, cannot be part of the fabric of the community. Second, while the Child Welfare Committees have their fair share of latent periods, difficulties regarding attendance and participation and other problems, the activity is generally much more intensive than that of the traditional CAS Board. Members of the Child Welfare Committees adopt their role and tasks as part of their daily lives and rhythms. Finally, most of the committees act as case managers. It is usually the committee which decides whether a child should be removed, and which plans for the child's placement. Typically, CAS Boards and other vehicles for community participation in the child welfare system have deliberately and consciously avoided such a role.

The term prevention, which features prominently in agency documentation, has defied definition and specific implementation in the child welfare system. The newly-established Indian agencies are no exception to this, at least insofar as the term is not well-articulated. Primary prevention programmes, such as employment and economic development or housing, have not been seen as part of the role or concern of the agencies. Secondary prevention, involving general family life education and other such endeavours, has been present in some minor *ad hoc* measures.

At the tertiary level of prevention, although not always well-articulated in documentation, a number of fronts have emerged. If prevention is specifically defined as measures to prevent children from coming into care, there has likely been some success, although difficult to document. The statistics on children in care do not actually bear out this assertion. The figures are quite erratic, but they show, in general across all six agencies, no reduction in the child-in-care caseload. The child-in-care caseload of one of the agencies nearly doubled over a two-year period. However, this increase is lamentable only because it is an indicator of the number of troubled families in these communities. It is likely, although difficult to document, that there are children in questionable circumstances with natural parents who are protected through the close monitoring provided by the community-based system. In this regard, removal from parents is prevented.

Second, the objective of preventing the removal of children from the local community has been largely accomplished by giving priority to the use of the extended family as a substitute care resource. Traditional Indian child rearing practices, in which the child moves comfortably back and forth among natural parents, grandparents and other kin, in fact blur any distinction between the nuclear family and the extended family. The only difference now is that a mandated agency monitors and places its seal of approval on such arrangements when a child is considered at

risk. In February 1984, in one Indian agency, 56 per cent of all children in care were placed with the extended family. Further, of all placements made by the same agency over a two-and-a-half-year period, 57 per cent were made in the child's community of origin. Another 17 per cent were made on other reserves within the tribal council area. Only 25 per cent were made outside of the area or off-reserve, and many of these involved extended family or other Indian families (Hudson and McKenzie 1981).

In addition, the Indian agencies appear to be working with their children in care in ways which can prevent permanent loss of attachment between natural parents and children. In the same agency referred to above, of all placements over the same two-and-a-half-year period, 74 per cent involved regular planned visits between the child in care and one or both of the natural parents. In many instances (numbers unknown), this practice resulted in the successful return of the child to the parent(s), and in others the potential remains. Comparative data is unavailable, but this success rate seems to contrast sharply with previous results.

Finally, there is another and perhaps fuller meaning of the word "prevention," which is illustrated by the operations of the Indian agencies to date. It is better expressed by the term "promotion." It is a way of approaching daily case management which recognizes that activities to prevent undesirable results, such as family breakdown, are only ever partially successful. At its most fundamental level, prevention is the promotion of a community's ability to respond in a caring way to the problems and needs of others. Reinforcing the role of the natural parents and extended family as caregivers for the children begins to accomplish this objective. Many Child Welfare Committee members who assist with emergency weekend and night coverage have provided direct service to families where it was judged inappropriate for the worker to do so. The structure of local committees, and the availability of a locally-based worker, provide support to early identification and intervention. Other community service workers are usually members of local Child Welfare Committees. With other key community representatives, they constitute a communication network able to bring problems to the early attention of the Committee or worker for follow-up or investigation. Extended family members are not only used as substitute care resources, but on occasion as active partners in assisting a family.

This approach is perhaps best illustrated by the custom of some Child Welfare Committees of meeting with troubled families. In other communities and other systems, problems of child neglect, abuse or family breakdown involve the ordinary community member only at the point of intake, if at all. Once information is given by a neighbour or a relative, that person's obligations cease, and in fact, his or her anonymity is protected by law. After the initial contact, the professionals take over. Yet, surely, the greatest act of caring is the willingness of the relative or neighbour to share his or her concerns directly and face-to-face with the family in question, risking anger or rejection in the implied offer of help. This is precisely what has occurred in some instances. Where committees have met with families, it appears that family members receive clear and appropriate counsel in a fashion that demonstrates the Committee's collective concern, on behalf of the community, for the

well-being of the family. Family concerns are heard, followed by a full disclosure of the Committee's concerns and a discussion of the options available to the family. Decisions are made with the family as an active participant in the process. Many families approached the process with initial feelings of anxiety and resentment but later saw the process as supportive. Moreover, public exposure of the family's problem often creates new expectations that the family and committee will act on commitments and ensure improved results.

THE ISSUES SURFACE

Together, all these features of the Indian system represent a recapturing of the community's ability and willingness to assume collective responsibility for the well-being of children and families. These features, along with carefully-planned structures and training programmes, have been put into place in a remarkably short space of time. And yet, perhaps because of their recency, a number of critical issues are beginning to emerge. Failure to face them squarely may provide one more example for the skeptical and often racist onlooker to question the ability of Indian people to assume responsibility over their lives and development. We turn now to an examination of these issues.

A cluster of issues involve the relationship of the Indian agencies to the external environment. The first of these is the limit to autonomy under existing Agreements. Self-government or nationhood in any full sense of the word contains, by definition, a legislative branch, a judicial branch and an executive branch. The same holds true for divisions within government. Within the sphere of child and family services, the Indian agencies have achieved only executive powers. The province retains legislative powers and, through legislation, all powers over setting standards for substitute care and the like. Insofar as portions of the legislation require reference to the courts, and because there is no tribal court system, the Indian agencies and families are obliged to continue to use the non-Indian courts. In practice, the discretionary powers of the agencies who administer the legislation is considerable. There is great latitude for the exercise of judgement by the worker and agency about how a family is to be assisted, whether to remove a child, choice of placement, long-term planning and preventive programming. These discretionary powers are used to the fullest by the Indian agencies, as they are in their non-Indian counterparts. Nevertheless, the existing model does not represent anything close to full control.

This is not just a matter of principle. Discretionary powers notwithstanding, existing legislation continues to present problems to the Indian agencies and to Indian people in general. Strict time limits remain on providing some of the least disruptive forms of intervention such as homemaker service, temporary contract placements and temporary orders. These strictures are inappropriate when working with a population for whom continual crisis is frequently the norm. In some instances, existing legislation has forced the agency to adopt the last resort measure of applying for a permanent order, against its better judgement in the specific case at hand, and against its general philosophy. Similarly, Indian custom adoption, which provides the natural parent(s) with the opportunity for an ongoing role, is not upheld

in legislation in any explicit way. The *Child Welfare Act* of Manitoba, as in most other provinces, is based on the principles of anonymity and permanent extinguishment of natural parents' rights. Attempts by the Indian agencies to reunite families, or at least re-establish communication, have been frustrated by legal and regulatory obstacles.

The Indian agencies' experience with the courts has thus far been reasonably positive. The courts have generally been sympathetic to recommendations from the local Child Welfare Committees, although obviously only when they are consistent with the legislation. Nevertheless, court appearances remain a frightening experience for most clients, and it has been alleged that in many instances parental consent has been achieved only because the client wishes to avoid a court appearance. More importantly, the necessity to answer to the existing court system contradicts the political objective of repatriating service delivery and accountability to the local level, or at least to a regional structure controlled by Indian people.

Indian agencies can move in two general directions in regard to this issue. The first is to work within the existing framework while maximizing their discretionary executive powers. There is evidence this is occurring, and that the "least disruptive" options are used to the fullest. For example, in Indian agencies the percentages of the child in care population categorized as temporary contract placements are considerably higher than provincial norms. Permanent orders requiring application to the courts and extinguishing natural parental rights are proportionately lower than provincial norms. Simultaneously, Indian agencies can work with the province and child caring agencies to effect legislative and regulatory changes more suited to the Indian agencies' philosophy and objectives. While this would seem to the author to be an appropriate feasible option, vigorous attempts to influence the current review of the *Child Welfare Act* have met with limited success. In addition, although this strategy could meet some of the concerns about service delivery, and while it reinforces the notion of common human needs, it does not address the more fundamental political issue of control and self-government.

The only alternative strategy would seem to be federal legislation empowering the Indian agencies to act in child and family service matters. Such legislation would replace the authority of the province. It could be achieved either through special legislation, such as that enacted in the United States (United States 1978), or through amendments to the *Indian Act*. Legislation and funding would have to provide for the establishment of local or tribal courts empowered to rule in child and family service matters, to which the agencies would be accountable and to which clients would have recourse.

The second of these issues is jurisdiction in the case of off-reserve services. The clear statement of policy from the Department of Indian Affairs, which insisted on tripartitism, also ruled out any mandate or funding to Indian agencies for the delivery of service to its off-reserve members (Canada 1982, S.2.3C). Existing agreements contain the same explicit limit to jurisdiction. The Chiefs, as well as the Indian agencies, have taken the stand that the jurisdictional line ought to properly be drawn at membership, not residence, at least within provincial boundaries. They point

to the large numbers of families living off-reserve (in the southern areas, over 40 per cent in some instances), and see existing agreements as severely limiting their ability to achieve the political objective of control over their affairs, and their ability to deliver services to their members. The Indian response to this issue, in the short-term, has been to rearrange budget priorities to establish an off-reserve service, primarily in Winnipeg but also in a few of the smaller centres. The provincial response has been to issue a directive to all child caring agencies requiring them to consult with the appropriate Indian agency and to engage in joint case planning. While this represents considerable progress, the fact remains that Indian agencies have no formal powers or jurisdiction over final dispositions. The Indian agencies have only limited abilities to influence and advocate.

Formally extending jurisdiction for service to off-reserve members raises the spectre of increased fragmentation of the system for service planners and providers. Yet the logic of the argument for such extension is compelling. The Indian agencies' inability to exercise the same judgements, for which they are currently empowered on the reserves, over its large number of members living off the reserve represents a serious limitation to arresting the loss of Indian children and the separation of families. In service terms, too, the resources of the reserves are severely extended. The agencies cannot continue to rely exclusively on reserve-based foster homes to accommodate repatriated children and children requiring substitute care. Even with sufficient resources (including plentiful, high-quality housing) there are often medical, educational or social reasons for the use of off-reserve resources that Indian agencies must be permitted to develop and supervise.

A related issue involves current relationships between the Indian agencies and the other child caring agencies. It is related because it becomes most evident in case planning for off-reserve members. The relationship involved here is influenced greatly by past history. The general experience of Indian people with non-Indian institutions is a matter of record. As a colonized people in a racist society, Indian people have every reason to distrust. The child welfare system does not escape that generalized distrust, and it can also be charged quite specifically as an active, if unwitting, instrument of assimilation and of the destruction of Indian families. On the other hand, there are many workers in the mainstream system who interpret their past experience quite differently. At a time during the 1960s and early 1970s when the level of social organization on some reserves was at its lowest, they responded to requests from people on the reserves, including Chiefs and Elders, to remove and plan for children. The alternatives in each and every case appeared to be limited. The workers responded to a particular set of circumstances out of the conventional wisdom of the day. They have reacted to the anger and criticism levelled at them in the past few years with their own anger and sense of betrayal.

For much of the time, these emotions have not surfaced and there has been a surprisingly high level of cooperation between workers in the two sets of agencies. Ill feelings have surfaced when two conditions were present. The first condition is the type of case. There were many cases where a child in care was in the custody and guardianship of a non-Indian agency and placed off-reserve. This situation may have resulted from an adoption breakdown, a long-time permanent placement or

a recent apprehension. In any event, these situations came to the attention of the Indian agency, which sought the repatriation of the child to the reserve of origin. The other condition is where the line workers cannot reach agreement or find the case too hot to handle, and subsequently refer it to the Director or Board. It is under these circumstances that the cooperative relationship breaks down.

Once this occurs, both parties become accomplices to subordinating sound case planning to their feelings toward one another. The agencies engage each other in a win-lose battle. In a few instances, final disposition of the case has been referred to the Minister — which places that person, who cannot possibly be privy to all the circumstances of the specific case, in an entirely inappropriate position. The passage of time offers some hope for resolution as each group learns to respect each other's competencies and respective mandates. In the meantime, a frank acknowledgement of each other's feelings toward one another as well as the source of these feelings as they arise in specific cases would seem to be in order. Social workers are supposed to have this type of understanding. Their failure to act on this knowledge and behave accordingly in meetings is both inexplicable and inexcusable.

Furthermore, identification and acknowledgement of the two languages used during such confrontations is required. By "languages," I mean the tendency of the spokespersons for the Indian agency in such circumstances to emphasize political objectives, while the spokespersons for the non-Indian agency emphasize service objectives. The Indian spokespersons argue that the child is an Indian child and the tribe or band, through the agency, is now demanding that s/he be returned to his or her proper place in the community. The non-Indian agency, under existing law and agreements, has guardianship and custody of the child and a statutory responsibility to plan for the welfare of that child. It is reluctant to transfer custody or guardianship to another agency without further investigation. It therefore presses the Indian agency for details of placement planning. The Indian agency, in turn, perceives this as irrelevant to the central issue and further evidence of obstructionism and of the traditional lack of confidence in the ability of Indian people to manage their own affairs. There are no easy answers to such an impasse but an understanding of the dynamic by both parties would appear to be a necessary first step.

The second cluster of issues concerns the internal environment, including the structures of the Indian agencies. When in the planning stages, the agencies were intended to enjoy an arm's-length relationship to the political structure. While the tribal council organization was the parent body, the service delivery agency was to be a separate body, incorporated in its own right. The argument for this separation was that the agency was a statutory service, thereby qualitatively different from other services at the tribal council or band level. While operating in a manner consistent with the general political objectives of the Chiefs, it required some distance from the political structure to enjoy the freedom to develop sound procedures for hiring and service delivery. This early commitment has been eroded in a short space of time and, for the most part, the service delivery structure is now hardly distinguishable from the political structure. The full implications of this situation are not

clear. The line between positive political support and interest and unwelcomed political interference is not an easy one to draw. The agencies must commit themselves to continuing review of this issue.

A starting point in such a review is discussion of the medium- and long-term reconciliation of legitimate political objectives and the service objectives so important to the operation of a statutory, highly-sensitive and controversial service. A case in point was the commitment of the Chiefs forming the Board of one agency to "Indianization" of staff. The commitment was an entirely legitimate one, but in the short-term it led to hiring staff of questionable quality and qualifications in key positions, and also to a serious shortfall in staff. Since the Department of Indian Affairs began to transfer funds to the bands and tribal councils to operate certain services on its behalf, these funds have frequently been used for job creation more often than for important service delivery. When a child's life and future is at stake, however, staffing becomes a more serious issue.

In addition, existing structures run somewhat counter to the more traditional structures of Indian government. For five out of the six Indian agencies in Manitoba, the mandate to act as a child caring agency passes through the regional structure. Traditionally, however, power and authority is located with the Band and its leadership. This tradition is incorporated into the philosophy of the agencies, which use the local committees and workers to maximize local decision-making. A tension does arise here, however, in that in present circumstances decisions are made at the local level for which the regional level is ultimately responsible under the Act. While the consensus decision-making process generally works, there have been instances where these tensions have surfaced around both personnel and staffing issues and case planning. Again, the agencies cannot resolve this issue in any final way. To move further toward regional authority contradicts a reasonable and mostly workable philosophy. To move toward full power and accountability at the community level (requiring renegotiation of existing agreements) would eliminate an essential regional capability for coordination and sharing of resources and expertise. What can be changed is recognition, by the Chiefs particularly, that the structure is a variation on traditional forms of government and necessarily so. The present lack of recognition creates confusion and breakdown in communication, which is avoidable. In addition, there must be a vehicle for resolution of situations where agreement is not achieved through consensus. The logical place is the regional boards or committees themselves which, until now, in the name of local autonomy, have frequently avoided taking such responsibilities. This state of affairs has put regional staff in awkward positions on a number of occasions.

Second, while locally-controlled delivery systems are on balance preferred to more centralized forms of delivery, their hazards must also be frankly acknowledged. One of the difficulties is that otherwise routine matters can become highly politicized and conflict-ridden. This is particularly evident in hiring, evaluation and firing of staff. The preferences of the Chief, family loyalties, past histories and relationships all influence these decisions, sometimes to the detriment of the quality of service delivery. Here too, there has been some lack of appreciation of the difference between operating a statutory service, and operating other kinds of services with which the communities have prior experience. There has been a very large

turnover of local staff in the early years — up to 100 per cent in one year in one instance. This turnover is attributable to the pressure of the work and the multiple accountability arising from living and working in the same small community. It is also due to the often inappropriate hiring of people who lack the personal qualities or skills to meet the service demands, or to benefit fully from training programmes. Several communities have not experienced this problem and others have improved their hiring practices and choices as turnover occurred. For many others, it still remains to establish procedures which minimize the "downside" of local control. And the Indian agencies in general must still take a serious, long-term view of training and educational requirements to increase their resource pool and staffing options.

Finally, there has been a lack of appreciation at both the regional and local levels of the enormity of the task which has been undertaken. Four hundred years as a colonized minority, and concomitant vigorous efforts by the institutions of colonial power to assimilate Indian people, have taken a tremendous toll on the quality of family life, and on general social organization on the reserves. Movement toward cultural revival and the assumption of greater responsibilities in the past 20 years has been diminished recently. There remains slow progress on land claims, lack of an economic base, widespread unemployment and poverty, loss of traditional roles (especially for men) and victimization by stereotyping. All of these factors lead to various kinds of response, some of which are self-destructive and harmful to the general well-being of the children. At best, the daily lives of Indian people are filled with pain and crisis which, although handled with remarkable strength and stoicism, have consequences for children, who the new agencies are then called upon to deal with.

Again, these realities will not disappear in the short term, and are obviously not the fault of the agencies. What has changed is a tendency for the Indian leadership to downplay these realities, to counter the skepticism and scrutiny of the non-Indian agencies. Essentially the rhetoric has rested on the idea that if Indian control is achieved all else will fall into place. The reality is that control is a first step from which staffing and service quality can be carefully planned.

There have been a number of illustrations of the consequences of assuming that achieving control and injecting Indian values automatically deals with service issues. One consequence has been the heavy reliance on the extended family as a substitute care resource, without adequate support and follow-up. It was as though the high value placed on the extended family would provide some magic for care and healing, without regard to the extra strains placed upon it, its coping abilities and the need for further assistance. Many placements have broken down partially as a result of lack of follow-up. Repatriation has not always been clearly advisable. Policies and service plans need to be developed under which cultural or familial bonding and reattachment can occur in some instances without disruptive movement of the child.

CONCLUSION

The new Indian agencies operating under the Manitoba model have accomplished a great deal in a very short period of time. Agreements have been signed, structures

designed, staff and training programmes, and policies and programmes for service delivery have been put into place. Indian children and families enjoy a level of advocacy not available under the previous system. From the commitment of volunteers, in conjunction with staff, has evolved ways of working with families which challenge the practices of the non-Indian agencies and from which learning can be transferred and modifications made. Yet the agencies remain fragile and have much yet to do. Funding remains uncertain. Considerable limits remaining on the degree of control will have to be resolved. Political and service objectives which ought to be united have become temporarily separated and the rhetoric of political aspiration has outstripped some of the realities and difficulties of service delivery.

The Indian leadership and its agencies will have to face these issues squarely if they are to survive and to achieve their objectives and legitimate aspirations, but the external environment will play an important part in their success or failure. This paper is addressed essentially to workers and agencies in the non-Indian system rather than the Indian agencies themselves. The author has observed a lack of appreciation on the part of non-Indian agencies of the enormity of the task undertaken by their Indian counterparts, and of the history on which their task is based. Agencies have to understand the anger and distrust of the Indian leadership and agencies for what it is, and resist responding in kind. Many workers and agencies still resist reconsidering conventional wisdom, such as closed adoptions, and are distrustful of the competence of the Indian agencies, without regard to their newness and the issues involved. The province must also re-examine its role as the authority for the Indian agencies' mandate. Until recently, it has been supportive in an enabling way. With a few exceptions, it has not been actively supportive in consultative and other ways.

In the final analysis, the issue remains one of trust. Although, in political terms, it ought not be necessary, Indian agencies do have to demonstrate competence to the external environment. That environment is still empowered to provide or withhold funds and mandate, an unfortunate reality. It also has jurisdiction in many cases involving Indian children, and the non-Indian agencies' goodwill depends in part upon perceptions of competence. The external environment, in turn, has to demonstrate that it is capable of minimizing the racist manifestations of past dealings with Indian families, of better understanding the political aspirations and cultural traditions of Indian people and, thus, of earning the trust of the Indian agencies. This is the sole basis for a future partnership concerned with the best interests of the child.

NOTES

1. The term Indian is used throughout this paper to denote those having the status of Registered Indian within the meaning of the *Indian Act*. Non-status Indian people, Métis and Inuit people have experienced a similar history with the child welfare system but, lacking certain kinds of political institutions, have not yet been able to respond in the same way as their brothers with legal status.

2. This policy and its pitfalls are described in: Ryant, J. *A Review of Child Welfare Policies, Programs and Services in Manitoba*. Government of Manitoba, 1975.
3. *Indian Child Welfare Act of 1978*. United States Public Law, 95-608.

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